SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1411

THE PADEREWSKI FOUNDATION, INC., et al.,

Petitioners,

v.

GEORGE J. SUSKI, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUMMARY REVERSAL TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

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PETITION FOR WRIT OF CERTIORARI AND SUMMARY REVERSAL TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners pray that a writ of certiorari issue to the Supreme Court, State of New York, Appellate Division, First Department, to review its three orders of October 26, 1972, denying and dismissing a petition to it in Mandamus for a review of the judgment of the Supreme Court of the State of New York, entered on February 9, 1972, and the review of the deliberate failure by said Supreme Court to adjudicate two motions pending before it, made on January 27, 1971, on January 17, 1972 and marking

the latter merely for identification, and an order of the State Supreme Court of March 1, 1972 denying a motion to vacate the judgment and other relief. Your Petitioners also pray for a review of other orders described below, one of which punishes Forman Bullock, attorney, and Edward Rager, counsel, respectively, for petitioners for contempt of Court, without any factual or legal basis and a hearing, though directed by two Justices of the Supreme Court.

In view of the fact that the orders of the Appellate Division and of the Supreme Court, the judgment and various proceedings pertaining thereto are under several confusing captions purposely variably initiated and conducted by the respondents, with parties named, against whom the proceedings were discontinued or who died, despite numerous arduous efforts by the petitioners for one proceeding and one caption, it is hoped that the clarification below as to the status of various parties may be accepted by this Court as helpful.

Your Petitioner, The Paderewski Foundation, Inc., (referred as Paderewski Foundation or Foundation), was formed in 1948 under the name of The Ignacy Jan Paderewski Foundation of New York, Inc., as a charitable New York Membership Corporation. Its amended Certificate of Incorporation, which the judgment of the State Supreme Court invalidates, was filed with the Secretary of the State of New York on May 12, 1967. The Foundation referred to in the original complaint in the Equity Action, formally as a defendant, is later referred, both in the Fales, et al., as in the Equity Action, and in the Mandamus Proceeding by

Fales, et al., and in the Special Proceeding by Leon Zawisza, as the principal party for or against whom relief is sought.

Your Petitioners, Dorothy T. Fales, George R. Englert, Isabel C. Englert, Sigmund H. Uminski, Mignon Zulinski and Edwina Rager, are referred to in various proceedings in the Courts below as Fales, et al., plaintiffs in the Equity Action instituted by them in behalf of the Paderewski Foundation and themselves individually in the State Supreme Court on June 5, 1967, against Witkowski, et al., as defendants. After the complaint in that action was superseded by a petition on February 2, 1970, converting it into a Mandamus Proceeding, they are referred as Fales, et al., petitioners, and as Witkowski, et al., or Suski, et al., respondents.

Among the parties whose names appear in the caption of the judgment and some other proceedings are Haliburton Fales, who died in May 1970 and Witkowski who died in October 1970 and the action against him and his wife Witkowska was discontinued in May 1970. The action was discontinued against Phyllis Bohleber in November 1967; against Aleksandra Wos in May 1970; and the complaint against Walter J. Bayer was dismissed in 1967. Wladyslaw Furka died in May 1968 and the action against him was discontinued by a stipulation filed in the Appellate Division in that year.

The caption in the judgment in the Matter of the Paderewski Foundation on the petition of Leon Zawisza, omits the names of the respondents named in the order to show cause, by which it was instituted in October 1968, to wit, The Paderewski

Foundation, Inc., George Englert, Isabel C. Englert, Sigmund H. Uminski, Mignon Zulinski, Edwina Rager and William Diefenbach. Their names, except that of The Paderewski Foundation and William Diefenbach, are only included in the last decretal part of the judgment. As to Domaradzki, named as defendant both in the Fales Equity Action and in the substituted for it Fales Mandamus Proceeding, Sidney S. Bobbe, Esq., who throughout the litigation either appeared for him or excepted him as a defendant or respondent, did appear for him in the final proceedings in the State Supreme Court resulting in the judgment.

The Mandamus Petition to the Appellate Division for review in respect to the judgment of the State Supreme Court contained as respondents the State Supreme Court and Justices of said Court James J. Leff and Edward J. Greenfield, and also Suski, et al., as respondents in the Mandamus Proceeding in the State Supreme Court.

Justice Greenfield was only involved in the proceeding in the State Supreme Court on an application by Theresa Cannone, Gunars Grinbergs and Patrick Joseph Murtagh, as members of The Paderewski Foundation, aggrieved by the judgment of the State Supreme Court and by the elections held pursuant thereto and sought to void both. Petitioners Bullock and Rager only joined in that application (designed to be referred under a specific direction in the judgment to Justice Leff) solely as to the elections and clearly stated that they did not participate in the application as to the vacatur of the judgment in order not to duplicate their already pending appeal from it and they only

joined in respect to the conduct of the elections on March 19, 1972. In any event it would have been an exercise in futility to proceed in the Appellate Division with the appeal from that judgment, both because of the denial by it on October 26, 1972 of all relief including the dismissal by it on that day both of the Petition in Mandamus and of the appeal by the Fales Petitioners and Edward Rager from the order of the State Supreme Court denying the vacatur of the judgment and the denial of any extension of time to perfect the records on appeal and the transfer, because of bias, of all proceedings to the Appellate Division, Third Department. None of the petitioners desire to participate in any elections of The Paderewski Foundation in the event the judgment is not vacated and therefore no relief is requested against Justice Greenfield. However, the papers on the main application to the Appellate Division referred and included the papers pertaining to the application for an extension of time to perfect the appeals and to the transfer and they are necessary as a part of that application for the whole record. The application to the Appellate Division, denied on October 26, 1972, included the consolidation of all proceedings before it.

Forman Bullock and Edward Rager, aggrieved by the decision and judgment in the Zawisza proceeding and the decretal parts thereof directed against them, are not named as parties in the order to show cause in the Petition of Zawisza with no prayer for any relief against them but appear as parties in a contempt order in September 1970 and also as parties aggrieved by the judgment.

It should also be noted that throughout the proceedings Sidney S. Bobbe appeared at first only for defendant Bohleber who was obliged to discharge him in order to enter into a stipulation of discontinuance against her in November 1968. Thereafter, he appeared in March 1968 as counsel on the appeals from the order of the Supreme Court, Loreto, J. Then he appeared again in September 1968 as counsel, stating that he expected to be substituted for respondent Malon. By letter, during the proceedings before the Supreme Court (Justice Saypol) in November 1969, he wrote a letter to then counsel for petitioners, Mr. Trosk, stating that he had authority from Malon, still appearing for two of the respondents, to appear for all except Domaradzki. Thereafter, on numerous motions made by him in the Zawisza Proceeding, Fales Equity Action and in the Mandamus Proceeding, Mr. Bobbe either appeared for all, without any reservation; some; or for some "except". This was particularly so pertaining to Domaradzki, both as defendant and respondent. Finally, in the judgment rendered on February 3, 1972 and entered on February 9, 1972, Mr. Bobbe appeared for all.

OPINIONS BELOW

There were no opinions on the orders for review in the Appellate Division made on October 26, 1972 and on applications for rehearing or leave to appeal on January 11, 1973. Decisions or opinions were rendered both by the Appellate Division at several stages of the litigation leading up to and promoting in effect the final judgment entered in the State Supreme Court on February 9, 1972

and to the order of March 1, 1972 by said Court denying its vacatur and denying by implication the repeated prior requests included in the motion to vacate the judgment, to adjudicate a motion made on January 27, 1971, and another on January 17, 1972, to strike from its trial calendar a note of issue and statement of readiness in the non-existent Equity Action and to grant relief in a Mandamus Proceeding pending in said Court, with which it declined to "bother"; both motions undetermined since April 24, 1970 when issue was duly joined therein.

The decision by the State Supreme Court directing the judgment is in Appendix G, p34-36.

Among the decisions by the Appellate Division which we believe are very material as to the questions presented to this Court are:

In the State Supreme Court by

(1) Justice Loreto, August 21, 1967, in the Equity Action, granting an injunction and directing a reference (Appendix I, p45-53).

(2) Justice Saypol, January 31, 1969, in a Special Proceeding by Leon Zawisza v. The Paderewski Foundation, Inc., striking paragraphs therefrom as scandalous and ordering a reference as to elections (Appendix J, p64). Justice Saypol also granted an appeal from the order striking the paragraphs dismissed by the Appellate Division as non-appealable (Appendix J, p65), granted a contempt order for the violation of Loreto, J. injunction and a reference as to the issues, granted a motion to strike an answer in the Equity Action for failure to submit to discoveries to the extent

of directing submission, modified a demand for a bill of particulars and denied a motion to dissolve an injunction (Appendix J, p59-76).

(3) Justice Ascione, directing the examination before trial of defendants (Appendix K, p77-86).

(4) Justice Fein, February 2, 1970, permitting the substitution for the Equity complaint by a petition in Mandamus and joining therein Leon Zawisza and others as respondents and directing submission to discovery by the respondents (Appendix L, p90-96).

(5) Justice Markowitz, March 9, 1970, (made before the entry of the Fein, J. order) denying a motion for an acceptance of a bill of particulars and a direction for submission to discovery (Appendix M, p101-115).

(6) Backer, J., April 28, 1970, denying a motion for summary judgment made in the Equity Action on the ground of preclusion ordered by the Appellate Division, granting leave to discontinue proceedings against the defendants Witkowski and Witkowska and a stay of proceedings on the part of respondents unless in thirty days costs awarded against them in July 1968 are paid and further staying them unless they submit to discoveries as directed by Fein, J. order (Appendix N, p107-112).

(7) Levey, J., brief opinion embodied in an order of May 18, 1970, denying the consolidating of four orders (nonetheless each entered separately) in Zawisza, Equity Action and in the Mandamus Proceeding and denying motions by petitioners for

judgment in Mandamus, the declaration of the Fales Equity Action as no longer existent, consolidating the Zawisza Proceeding with the Mandamus and striking the answer thereto or in the alternative similar allegations as stricken in the Zawisza Proceeding with leave to renew upon completion of the hearings before the Referee (Appendix O, p113-120).

(8) Murtagh, J., August 14, 1970, deploring the splintering of the litigation and adjourning motions to September 2, 1970 (Appendix P, p128-9).

(9) Fino, J., September 25, 1970 (three orders) punishing Forman Bullock, attorney of record for petitioners and Edward Rager, counsel for petitioners for contempt of Court and denying motion by respondents to dismiss the Equity Action "for neglect to prosecute", denying renewed motions by petitioners for consolidation of Zawisza with Mandamus, leave to submit an amended supplemental petition and dismissal of Zawisza or consolidation with the Mandamus with leave to renew (Appendix P, p122-145).

(10) Justice Brust, September 28, 1970, denying a motion by respondents for a separate and new index number for the Mandamus Proceeding with leave to renew. There were other orders of renewed motions made on additional facts and by inclusion of papers which were mis-directed and splintered among other Justices described merely as for re-argument and affirmances thereof (Appendix P, p146-148).

In the Appellate Division

(11) The numerous orders of the Appellate Division are without any opinions though sometimes very briefly and often stating when appeals were dismissed that they were duly argued and if appealable would have been affirmed. The Appellate Division rendered an opinion reported in NYS 33 AD, p678 (infra). There was also a brief opinion on the affirmance of the order of Backer, J. of April 28, 1970 (Appendix N, p108), rendered by the Appellate Division on January 19, 1972 (Appendix N, p113).

We have been able to find only the following citations in the reports: In 301 NYS 2d Fales v. Witkowski p956; same volume in Zawisza v. Paderewski, p957; in the 322 NYS 2d, p984, two Fales v. Witkowski, Fino, J. orders, one on Zawisza. In the same volume on p985 in Mandamus order of Fino, J.; p980, Fales v. Witkowski order of Fein, J.; p981 order in Mandamus February 2, 1970 order of Fein, J.; p981 order of Markowitz; and p981 order of Levey, J. In the same volume, p982-3, three orders of Levey, J. and three of Fino, J. None of these reports reported citations all pertaining to the Appellate Division, First Department, have any opinions except that most of them are dismissed as non-appealable.

We believe that we have included in the Appendix all the pertinent opinions and orders relating to the petition herein. However, we request leave to cite any omissions by a supplemental appendix.

JURISDICTION

The judgment of the Supreme Court of New York of February 3, 1972 was entered on February 9, 1972 and it is final by its terms (Appendix G, p27). The order of the State Supreme Court (Appendix H, p38), denying its vacatur was entered on March 1, 1972, and the appeal therefrom dismissed by the Appellate Division on October 26, 1972. On the same day, the Appellate Division denied and dismissed a petition to it in a Mandamus Proceeding (Appendix C, p13) to review the deliberate omission by the State Supreme Court to adjudicate a motion submitted to it on January 27, 1971 (Appendix R, p177) contesting its jurisdiction to render the aforesaid judgment and to strike the note of issue and statement of readiness from its calendar.

A review was also sought in the Appellate Division of the deliberate omission by the State Supreme Court for adjudication of a motion, presented by petitioners to the Court, in accordance with ruling, on January 17, 1972 (Appendix T, p192). This motion requested a determination that the only action before the Court was the Mandamus Proceeding and judgment for petitioners in Mandamus or in the alternative striking scandalous allegations therein directed toward counsel for petitioners and adjudication of the validity of a stipulation on June 25, 1971 (Appendix T, p195) providing for the trial of Mandamus only and the vacatur of the contempt order stated above for the long delayed discovery and thereafter a jury trial. The Supreme Court merely marked the motion "FOR IDENTIFICATION". The Appellate Division, by its

order of October 26, 1972 denied also any review whatever and both motions are still undetermined.

By a third order of October 26, 1972 the Appellate Division denied an application to transfer all proceedings before it to another Department on strong undenied tragic proof of inordinate, patent bias and prejudice in said Court against the petitioners and particularly their counsel, and an active predilection for the respondents with an openly active participation of a named key member of its staff. The third order included also a denial of an extension of time to perfect the appeal from the order of March 1, 1972 and also an appeal from an order denying the vacatur of the elections on March 19, 1972 since, assuming the judgment was valid as we believe it was not, nonetheless it was fair and established procedure as to the holding of elections. At any rate, the latter point is moot since neither the petitioners and other members of the Paderewski Foundation would, under any circumstances, associate in any manner with the criminal gang to whom the judgment transferred its control and we specifically are not asking any relief on that score.

The petitioners also hope and pray that this Court has the power to review the most inordinate and shocking order of contempt visited on their attorney and counsel (Appendix P, p122) and as a part of the whole lack of due process and injustice inflicted on the petitioners and/or by virtue of the stipulation (Appendix T, p195), recognized as valid by the Supreme Court but entered specifically only on condition that the contempt order would be voided and only the Mandamus Proceeding tried.

The violation of due process clause under the Fourteenth Amendment was raised throughout the proceedings in the Court below. It is specifically contained in the appendix herein (Appendix W, p226-229), and with repetition in various other documents in the Court below and with an assertion made in various briefs, records on appeal and during and prior to the trial on January 17, 1972 as shown in its minutes.

Mr. Justice Marshall extended the time to present this petition till March 20, 1974 inclusively.

A rehearing on all three orders was denied by three separate orders of the Appellate Division on January 11, 1973. On November 21, 1973 the New York Court of Appeals denied leave to appeal without any opinion (Appendix F, p26).

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the approval, by the Appellate Division, of the judgment by the New York State Supreme Court declaring the forfeiture by The Paderewski Foundation of its amended Certificate of Incorporation, its By-Laws, its funds and other assets and transferring them and the conduct of its affairs to a lawless, violent group, bent on using the Foundation name as a vehicle for pernicious anti-racial, anti-religion and anti-semitic propaganda, led by an embezzler of its assets, is repugnant to the due process and equal protection

of law as guaranteed by the Fourteenth Amendment of the United States Constitution.

(2) Whether the approval, by the Appellate Division, of the judgment by the Supreme Court, restoring the charitable, not for profit, Paderewski Foundation, to its illegal status during eighteen years (on the petition of Leon Zawisza), during which it was operated for the pecuniary and other personal profit of several persons, including respondent Leon Zawisza, without any duly elected officers and directors and any valid membership meetings, is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution.

(3) Whether the order of the Appellate Division, confirming the judgment of the State Supreme Court, invalidating the election of the Paderewski Foundation on March 6, 1967, and elections duly held in 1969, 1970 and 1971, and directing a new election constitutes a violation of due process of law and is repugnant to the Fourteenth Amendment of the United States Constitution.

(4) Whether the permissiveness by the Appellate Division throughout the litigation for the maintenance proceedings under the title of a nonexistent action, confusing titles variably and capriciously at will of the counsel for respondents indluding or excluding various parties, making numerous simultaneous motions returnable on different dates solely to harass petitioners and confuse the Court, perpetrating perjuries and violating stays and thus causing splintering and protracting the litigation, creating bias and prejudice

against the petitioners' counsel, is a flagrant violation of the established standards of judicial and lawyers ethics and procedural law and is repugnant to the Fourteenth Amendment to the United States Constitution.

(5) Whether the confirmation by the Appellate Division of the judgment by the State Supreme Court, appointing Leon Zawisza the petitioner in a proceeding instituted under his name, charged with embezzlement of substantial Foundation funds and inflicting on it other grievous wrongs, as an impartial presiding officer of new elections, is consistent with the due process clause of the Fourteenth Amendment to the United States Constitution.

(6) Whether the order of the Appellate Division, denying an application to it for a vacatur of the judgment of the Supreme Court directing an election for directors and officers of the Paderewski Foundation to be held under its By-Laws in effect on March 1, 1967, despite the illegality of said By-Laws and contrary to its provisions and without any membership record and awarding the takeover of the franchise and assets of The Paderewski Foundation to the persons to be chosen at such election is repugnant to and inconsistent with the due process clause of the Fourteenth Amendment to the United States Constitution.

(7) Whether the denial by the Appellate Division of the vacatur of the judgment of the State Supreme Court permitting, in effect, the conduct of affairs and control of the property of The Paderewski Foundation by a group bent on abusing the

name of Ignacy Jan Paderewski, universally known as a champion of liberty, justice, culture, charity and compassion, to a group dedicated to greed and hate of persons of ethnic extraction other than their own, is consistent with the Fourteenth Amendment to the United States Constitution.

(8) Whether the denial by the Appellate Division of the application to vacate the judgment of the State Supreme Court which, with the supporting decision, deprives petitioners Dorothy T. Fales, George R. Englert, Isabel C. Englert, Sigmund H. Uminski, Mignon Zulinski and Edwina Rager of their rights as members, directors and officers, respectively, of The Paderewski Foundation and adjudging without any basis therefor all their acts in its behalf since February 13, 1967 as void, is consistent with the Fourteenth Amendment of the Constitution of the United States.

(9) Whether the denial by the Appellate Division of the application to it to vacate the judgment of the State Supreme Court against petitioners Forman Bullock and Edward Rager, attorney and counsel, respectively, for The Paderewski Foundation, adjudging them without any jurisdiction therefor, guilty of grave improprieties, without any notice to them whatever and without any allegations in the Zawisza petition as to Bullock and with the allegations as to Edward Rager stricken by a prior order of the Court, voiding all their acts in respect to the Foundation since February 13, 1967, a date nowhere contained in the petition, voiding their retainer and the right to any compensation, and depriving them of their property rights, is repugnant to the Fourteenth Amendment of the Constitution of

the United States.

(10) Whether the holding of Court ordered elections on a Sunday, despite religious objection is consistent with the due process clause of the Fourteenth Amendment of the United States Constitution.

(11) Whether the recognition by the State Supreme Court of the stipulation of June 25, 1971 as valid as to discontinuance of the Equity Action and total failure to enforce its express conditions for it to wit the maintenance of the Mandamus Proceeding and the vacatur of the contempt order, is consonant with due process under the Fourteenth Amendment of the United States Constitution.

(12) Whether the denial and dismissal by the Appellate Division of the petition to it for judgment directing the State Supreme Court to refrain from proceeding under a judgment entered against petitioners on February 9, 1972, and annul said judgment is violative of due process under the Fourteenth Amendment to the United States Constitution.

(13) Whether the denial by the Appellate Division of the petition seeking an adjudication of petitioners' motion made in the State Supreme Court on January 27, 1971 seeking to strike from its trial calendar an Equity Action in which the petitioners, as plaintiffs, had been precluded from offering evidence and which was duly superseded by a Proceeding in Mandamus, is violative of the due process and equal protection under the Fourteenth Amendment of the United States Constitution.

(14) Whether the denial by the Appellate Division of the petition seeking an adjudication of petitioners' motion made on January 17, 1972 in the alternative judgment in the Mandamus Proceeding or striking therefrom scandalous and prejudicial allegations against petitioner Edward Rager, not a party in said proceeding, discovery and jury trial is violative of the due process clause of the Fourteenth Amendment of the United States Constitution.

(15) Whether the approval by the Appellate Division of a trial directed against Edward Rager without according to him the right to be represented by counsel is consonant with the due process clause of the Fourteenth Amendment to the United States Constitution.

(16) Whether the dismissal by the Appellate Division of the appeal from the order of the State Supreme Court of March 1, 1972, denying a motion to vacate the judgment as void and also for lack of any proof to support it and in excess of its jurisdiction violative of the due process clause of the Fourteenth Amendment to the United States Constitution.

(17) Whether the denial by the Appellate Division of the application for the adjudication and granting of a motion, duly made with the prior expressed permission of the State Supreme Court, on January 17, 1972, for judgment in favor of Fales petitioners in the Mandamus Proceeding, or in the alternative, striking from the answer therein of scandalous allegations, including those directed to Edward Rager, not a party in said Mandamus, and in any event for the vacatur of an order pun-

ishing Forman Bullock and Edward Rager for contempt of Court, the return by Sidney S. Bobbe, attorney for respondents, of the sum of $500, extorted under threat of commitment, directing compliance by the Suski respondents with two prior orders of the Court for submission to discovery and a trial of said Mandamus thereafter before a Court and Jury, and the arbitrary and capricious marking by the said Supreme Court of said motion "for identification", without ever deciding it, constitutes an unprecedented violation of established procedural law and is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution.

(18) Whether the judgment of the Supreme Court of New York, entered on February 8, 1972, nullifying its amended certificate of incorporation is violative of due process of law of the Fourteenth Amendment to the United States Constitution.

(19) Whether a directive in a judgment for the holding of contested corporate elections, without any membership record and under the supervision of a contestant with the power to appoint tellers to record the votes is consistent with the due process clause of the United States Constitution.

(20) Whether the denial by the Appellate Division by its order of October 26, 1972 of the transfer of all proceedings in it to the Appellate Division, Third Department because of bias and prejudice is consonant with the due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution.

(21) Is a capricious refusal by a State Court after a motion for certain relief is denied with leave to renew after the conclusion of hearings before a referee and the hearings are terminated to consider the motion for adjudication, abhorrent of fairprocedural law and repugnant to the Constitution of the United States of America?

(22) May a State Court adjudge rights of an attorney, not a party to the action, after a trial against the party he represents, and is such a procedure consistent with the due process clause of the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

The Constitutional provisons and statutes involved are set forth in Appendix A and Appendix V. The petitioner Paderewski Foundation is a charitable membership corporation created by filing its certificate of incorporation approved by the State Supreme Court and filed with the Secretary of State, May 12, 1948. Since then, up to September 1970, it was subject to the provisions of the New York Membership Law and also the General Corporation Law. In September 1970, the Membership Law was repeated and substituted by the Not-For-Profit Corporation Law (Appendix A, pp. 5, 6).

The litigation was instituted in June 1967. The Not-For-Profit Corporation Law does not apply, though its provisions are more protective and more stringent in imposing on the State Supreme Court a high duty - "derived from the old time-honored powers and duties of a Chancery Equity Court - to see to it to use the language of the New York Statute (L. 1935, c. 691; L. 1939, c. 893, Sect. 1; L. 1940, c. 630, eff. April 19, 1940), that

> "The term Membership Corporation means a corporation not organized for pecuniary profit, incorporated under this chapter, or under any law repealed by this chapter;"

The shocking record of the affairs of the Paderewski Foundation for eighteen years prior to the active appearance on the scene by the petitioners and their counsel was

not only used for a pecuniary profit, according to the prevailing market place rules, but was grossly abused for obtaining substantial funds from the United States Government from any of its citizens to be used, to put it plainly into lining the pockets of a few individuals, who, to boot, used the Foundation as a means of promoting their anti-religion, anti-racial activities and a vicious unmitigated vendetta as they have during this very litigation against the petitioners and their counsel.

The already voluminous appendix is hardly sufficient to recite all the crimes perpetrated by the respondents and their undisclosed protectors.

Yet, strangely, the provision of Section 56 of the Membership Law, now embodied in Section 14 of the Not-For-Profit Law, L. 1970, c. 847, Section 6, eff. September 1, 1970, has the title "Visitation of supreme court". Yet, in the instant case though the petitioners and many other persons, fine decent human beings have been visited not by protection of law but on the contrary iniquity, persecution and deprivation, with the full approval of the State Supreme Court (but surely not of some of its individual members).

The Attorney General, too, as a Chief Officer of the State has both under the Membership Law and the Not-For-Profit Law a high duty to protect a charity membership corporation or for that matter to prevent any injustice which he, as the record shows, has not done in this case.

In Appendix A we have included the provisions of Civil Practice Act and Rules of the State of New York and particularly those pertaining to Mandamus, Article 78, Section 7801, et seq., (Appendix A, p. 6-11) which gives the power and the duty to the Court to direct even a Judge for capricious or arbitrary failure to act. We have also cited the Judiciary Act of the State of New York and the pertinent provision as to when and how an attorney should be punished for contempt of court, which law has not been followed in this case.

STATEMENT OF THE CASE

The case originated in the New York State Supreme Court on June 5, 1967 as an Equity Action for an accounting to Paderewski Foundation, a New York Membership Corporation, of misappropriated funds amounting to several hundred thousand dollars and an injunction against further depradation.

On November 14, 1967, an order granting a temporary injunction and appointing a Referee to take proof as to the validity of elections on June 5, 1967 was entered -(Loreto, J.)(Appendix H, pp48-57).

To circumvent the effect of the injunction, new officers and directors were surreptitiously substituted, the principal one Leon Zawisza, who admitted that he drew on funds of Paderewski Foundation but that it was less than twenty thousand dollars.

The injunctive order was affirmed by the Appellate Division on July 11, 1968. To nullify its effect, a proceeding was started in September 1968 by the counsel for the defendants in the Equity Action under the name of Leon Zawisza as an aggrieved member to invalidate elections in 1967 and 1968 and also By-Laws adopted on May 23, 1967 and to delete from an Amended Certificate of Incorporation June 29 as the date of the Annual Meeting of the Foundation (anniversary of the death of Paderewski)(Appendix I, p46).

The Petition of Zawisza named Paderewski Foundation and the plaintiffs in Fales Equity Action as respondents. It contained sixteen paragraphs directed to the validity of the retainer of petitioner Edward Rager of March 13, 1967 and the receipt of fees thereunder and it charged that the retainer was procured through coercion of the president of the Foundation. Neither in the order to show cause by which, under New York Law the proceeding was instituted - Section 25 of the General Corporation Law - (Appendix L, p99), nor the prayer for relief is the name of Rager included as a party.

The sixteen paragraphs were stricken as scandalous by the order of the State Supreme Court of February 4, 1969 and the appeal therefrom dismissed by the Appellate Division on April 22, 1969 (Appendix J, p65).

On July 1, 1969 the Appellate Division affirmed a State Supreme Court order of reference of February 17, 1969 in the Zawisza Proceeding which Referee appointed in the injunctive order of November 16, 1967. That order also dismissed a counterclaim against Zawisza for embezzlement of the funds of The Paderewski Foundation and representing himself falsely as its Chief Fiscal Officer and Director. The Appellate Division further affirmed on the same day an order of the State Supreme Court of February 4, 1969, granting a motion by the plaintiffs in the Equity Action to strike the answer of the defendants for failure to submit to an examination before trial pursuant to notices served in December 1967 and some within the

following months in 1968 to the extent of directing the defendants to submit to an examination to be continued from day to day. It further affirmed an order granting a motion by plaintiffs in the Equity Action to vacate a demand for a bill of particulars served in September 1968, with the provision that as to items of which the plaintiffs had no knowledge they could furnish them after the completion of examination of the defendants.

While the aforesaid appeals were pending, a stay of defendants' proceedings was in effect. The counsel for the defendants innored the stay and repeatedly made motions to the State Supreme Court to preclude the plaintiffs and to dissolve the injunction. A motion to punish him for contempt of Court was denied by the Appellate Division in April 22, 1969 (Appendix J, p66-67), but said counsel continued to violate the stays and between April and September 16, 1969, renewed both motions on various dates despite admonitions by several Justices to cease and an entry of a formal order to that effect by one (Helman, J. - Appendix K, p86). One of these motions appeared on the calendar of the State Supreme Court on September 4, 1969 and the Justice presiding (Loreto, J.) rejected the motion on account of the stay. On the very following day, counsel for defendants renewed the motion to preclude, though at the time motions for reargument or leave to appeal to the Court of Appeals were pending in the Appellate Division and an application both as to the bill of particulars and the examinations for trial urgently requested the Appellate Division to fix definite dates for the examination and the bill of particulars.

On September 16, 1969, the Appellate Division denied reargument and leave to appeal and resettlement as to the dates. An application was made to the New York Court of Appeals for leave to appeal from the orders denying an adjudication of contempt and from dismissing the counterclaim in Zawisza.

On September 23, 1969, the State Supreme Court (Ascione, J.) entered an order denying the motion to preclude, stating by inadvertence that plaintiffs furnished a bill of particulars (Appendix K, p79-86). This was an obvious error which was called immediately to the attention of the Justice by a motion for reargument made by the plaintiffs repeating also their original request for a referral of the motions both by the plaintiffs and defendants to Justice Loreto, especially as to the contempts by Leon Zawisza and the others subsequent to his order of November 16, 1967 to terminate the reference, grant a final injunctive order and preclude the defendants for being in default since early in 1968 in serving their bill of particulars and finally issuing their long delayed appearance for an examination before trial.

On reargument Justice Ascione adhered to his original decision with the appearance of the defendants not on one day as counsel for the defendants asked, but on various dates. Counsel for defendants then filed a notice of appeal in the Appellate Division and on an incomplete record and without the complaint and other vital papers, noticed it for argument on notice of several days only (the Appellate Division rules required twenty-eight days) for December 6, 1969. The defendants

immediately moved to dismiss the appeal and urgently pled for enlargement of time to present their cross appeal. On December 9, 1969, the Appellate Division refused to hear the plea of the attorney for plaintiffs for an adjourment and decided the appeal by default.

On December 18, 1969, the Appellate Division by three orders denied the motion to dismiss the appeal for enlargement of time for presenting the cross appeal and rendered the first opinion in the litigation, in which it castigated the plaintiffs for "dilatory tactics" and for "an unkept promise" to submit to an examination before trial. It imposed a fine of one hundred dollars costs and disbursements plus (which were paid) and precluded the offering any evidence as to the numerous palpably oppressive and many irrelevant items most within exclusive knowledge of the defendants. The order of preclusion provided for the bill within twenty days after service (Appendix L, p79-80). A motion was made promptly in the Appellate Division by plaintiffs for reargument or in any event a brief extension of compliance pending the decision. That motion was denied on January 27, 1970 without any extension (Appendix K, p79-85).

As to the unkept promise of defendants to submit to over two years delayed examination before trial, the Appellate Division ruled in its modification order that the defendants were to submit on various dates to begin only after serving a bill of particulars. As to the bills of particulars by the defendants requested in 1967, nothing was said.

Though by letter confirming the final day for compliance to the January 15, 1970, the attorney for the defendants was requested for an extension pending a decision on reargument and an extensive bill of particulars laboriously prepared during the Holy Season was nonetheless sent on January 15, 1970, the counsel for defendants rejected it asserting it was one day late (which it was not) and since he also insisted that four more items were not satisfactorily complied with, immediately a further bill of particulars was served and filed in Court. Neither was ever resorted to thereafter.

A motion was then made promptly for the acceptance of the bill of particulars and seeking to be relieved of the alleged one day default. A famous author wrote about One Day In The Life Of An Innocently Condemned Man in a prison camp in Siberia, who has about six hours for sleep but we, as we work to escape further humiliation and attainder, do not get that much.

While the proceedings were pending in the Appellate Division, counsel for defendants in the Equity Action made another motion in November 1969 to dissolve the injunction, a motion for an examination before trial of the plaintiffs, well knowing that Haliburton Fales was very sick and his wife, too, a motion to examine the attorney of record, Forman Bullock, before trial, returnable on different dates before different justices, to boot, suddenly pressed for hearings before the Referee hoping to acquire some more defaults.

A cross motion was then made seeking the advancement of all motions and their consolidation

on November 28, 1969, for leave to serve an amended supplemental pleading, to wit, a proposed petition in Mandamus. In it, which - because it was ascertained that the principal defendant Witkowski was totally irresponsible and caused to be unable to pay any judgment and the plaintiffs were anxious to be relieved of the further persecution and instead of going after Witkowski as to what happened in the past, concentrate instead on their original plan of rebuilding the Foundation and proceeding pursuant to the amended Certificate of Incorporation toward making of the Foundation a universal institution dedicated to the very best music and fine arts of all nations, their culture and the promotion of genuine freedom and justice, they decided to forego their individual claims for extensive damages they suffered as a result of the acts of the defendants and their instigators and to convert the action solely for the benefit of the Paderewski Foundation. Last but not least, the petition included the plenary suit as permitted against Zawisza and two others, and thus eliminate both the Equity Action and the Zawisza Proceeding.

On February 2, 1970, the State Supreme Court (Fein, J.) granted leave to serve the Petition in Mandamus with a supplemental summons to Zawisza and two others (Appendix L, p89-100).

His order directed also a discovery by the respondents but unfortunately denied consolidation of the Zawisza Proceeding with the Mandamus.

Since it was uncertain at the time, when Zawisza and the other two respondents could be

served, the petition was noticed for April 30, 1970. Before then and in March 1970, the counsel for defendants in the Equity Action moved for summary judgment on the ground of preclusion. His papers clearly showed and so did subsequently his briefs in the Appellate Division his aim to eliminate the references. He also made a motion to resettle the order of the Supreme Court (Saypol, J., February 4, 1969) providing for hearings as to the contempt, which was denied. In opposition to the motion for summary judgment petitioners cross-moved to stay all proceedings for failure by the defendants to pay costs awarded on July 1, 1968 and to submit to discovery as directed by the order of Fein, J. of February 2, 1970 and to discontinue completely the litigation against Witkowski and his wife, so as to preclude that vocal lady from advertising that she was being sued by "wealthy Jews" (none of the Fales petitioners happen to be, but some of them do follow the teachings of the great Hebrew prophets as to charity, compassion and justice).

On April 28, 1970, the Supreme Court (Backer, J.) granted an order denying summary judgment both on the ground that it was not available simply because of preclusion but also because a new amended and a supplemental pleading superseded the complaint. It stayed further proceedings unless the costs were paid within thirty days and the respondents submitted to discovery on a certain day. It permitted the discontinuance as to Witkowskis on the condition that they pay their share of costs. The costs were remitted by the petitioners and on May 7, 1970, a stipulation was filed in Court discontin-

uing it and from then on surely the Witkowskis were no longer in the case and proceedings should not have been continued with their names. It should be noted that though counsel for respondents shed crocodile tears in Courts and elsewhere complaining loudly about the bringing the Witkowskis into the case, yet opposed the discontinuance and continued their names.

Nonetheless, they were so continued for over two years later.

On April 24, 1970, an answer was served in the Mandamus. Its defenses were briefly as follows:

(a) That the special proceeding by Zawisza is "the exclusive means of determining the validity" of By-Laws and of elections.

(b) That there is pending an Equity Action under index number 11339/1967 and it "has been misappropriated by the Petitioners" from the Equity Action. This indicates plainly that it was the determined intention of the respondents to continue their splintering and confusion by the maintenance of Zawisza Proceeding, the non-existent precluded Equity Action and effect finally the determination of the Zawisza Proceeding only and to eliminate any possibility of judgment against him and his co-partners in crime since there was no counterclaim in Zawisza. This is the true reason for counsel for respondents for trying to retain the dead Witkowski in the litigation in the State Court.

The defense also clearly proved that intention by alleging in the answer the preclusion and it stated:

> "Said order of preclusion effectually precludes the petitioners from proving of the allegations of the petition."

If there ever was an ingenious tortuous self contradictory argument her was one. On one hand the answer seeks the continuance of both the Equity Action and Mandamus separately; on the other, it endeavors to apply the preclusion in the Equity Action to the Mandamus Proceeding.

This on the face untenable argument was realized in the final judgment (infra).

Finally, the answer contained a counterclaim with similar scandalous allegations directed to Edward Rager, not a party in any of the proceedings, which were stricken as shown above from the Zawisza Petition.

Thus, it became necessary to serve an additional motion to strike the answer or in the alternative the counterclaim as sham. However, Haliburton Fales, a truly noble rare human being of high repute and the principal man behind the efforts of the petitioners and who had made a written agreement with Witkowski that he would help financially and cause others to help, provided Witkowski did not yield to any intrigues, etc., and would not obstruct the efforts of the petitioners and their counsel (the record below contains many letters from Witkowski and Mr.

Fales confirming this), died suddenly early in May 1970, and a motion was made to drop his name as well as that of the Witkowskis from the Mandamus Proceeding and to consolidate all motions.

On May 18, 1970, the Court by four separate orders denied all motions with leave to renew upon conclusion of the hearings before the Referee.

In June counsel for the respondents here served four motions, each returnable on a different day, each under a different title - one in Mandamus in which he persisted to include the names of the Witkowskis despite the stipulation of discontinuance and continued that practice until determination of the action by the judgment - in which he sought the dismissal of the Equity Action for "neglect to prosecute". To prosecute a ghastly wraith? The true purpose of this motion was also to terminate the hearings on the references in the Equity Action directed by Justices Loreto and Saypol; the second motion was to punish the attorney and counsel Bullock and Rager, respectively, in the deceased Equity Action for contempt of Court for disobeying a telephone order by the Referee to make available to counsel for respondents a minute book of the Paderewski Foundation. Neither Rager nor Bullock was in the office when the call was made. By telegram and letter they requested the Referee to postpone everything after summer since Bullock was out of State and besides suffers intensely during hot weather effects of injuries inflicted on the battlefield during World War II, besides there were pending motions by both sides to terminate all references. The

third motion sought a new index number for the Mandamus and judgment on the counterclaim in it.

The fourth motion was for an increase of the undertaking in support of the injunction from two hundred fifty to twenty-five thousand dollars.

In opposition to each motion a cross motion was submitted under the title of the Mandamus Proceeding and in order to avoid any question of jurisdiction also affidavits as to contempt under the title of the departed Equity Action. Cross motions were also made to consolidate all motions and all proceedings and renewing the applications denied on May 18, 1970, with leave to do so for judgment in Mandamus or striking the scandalous allegations, for termination of the references, the dismissal of Zawisza or its consolidation with Mandamus.

Some of the motions appeared on July 20, 1970 before Supreme Court Justice Murtagh, who on August 12, 1970 condemned the splintering and adjourned the motions to September 2, 1970, to give an opportunity to plaintiffs to have all the motions heard together and thus avoid the continuance of further "badly splintered situation". He also denied an increase of the undertaking, as not warranted (Appendix D, p128-129).

In August 1970, the other motions including the one for contempt appeared before Supreme Court Justice Tierney; on seeing the papers, he immediately made a search for the Referee but could not locate him and then he made a memorandum of importance in this cruel unconscionably

confused litigation that the Referee appear personally at a hearing on September 11, 1970, he adjourned all motions before him so as to have them all on that day, not knowing at the time that on August 12, 1970, the order of Murtagh, J. had postponed the other motions till September 2, 1970. On that day, moved by statements of counsel for respondents similar to those made by him since July 31, 1970, when he appeared before Mr. Justice Loreto - antipathy of Judges in the Appellate Division to Rager (Appendix I, p56-57), despite pleas of counsel, the Justice presiding (Brust, J.) at Special Term refused to adjourn the motions till September 11, 1970.

On September 11, 1970, the Referee failed to appear and the motions were adjourned with a memorandum by Supreme Court Justice Lupiano, then presiding. The attention of this High Court is begged to its contents (Appendix P, p130-132), for it was a call for decency in the process of administering justice.

On September 21, 1970, both the attorney for respondents and the Referee failed to appear. On September 25, 1970, by three orders (Justice Fino) the motion to dismiss the Equity Action "for neglect to prosecute" was denied. (No joy at this sardonic victory) but Bullock and Rager were adjudged guilty of contempt, branded as unable or unwilling to terminate the litigation, fined two hundred fifty dollars each with the privilege of purging themselves by depositing two books for inspection under the supervision of the Referee. How and when shall such iniquities be purged? The cross motions and the motions by

the petitioners for judgment in Mandamus for consolidation of Zawisza with the Mandamus for service of a proposed supplemental petition in Mandamus reciting additional wrongs by Zawisza, et al., and omitting for the sake of common decency once for all the names of Haliburton Fales, with Witkowskis from all proceedings were denied with leave to renew. The brief opinions included in the orders purported to deplore that the papers were insufficient and incomplete and that some of the papers in opposition, particularly the contempt order were under a title of a "different proceeding" (Mandamus).

On September 28, 1970, Justice Brust in his decision regretted too similarly that he did not have the necessary papers before him and denied the motion of respondents for a new index number and judgment on the counterclaim with leave to renew. We are keenly aware of how busy this Court is but is it possible for it to have available a key assistant to read the complete Brust and Fino files and report to the Court whether the regrets were genuine or feigned?

Immediately thereafter, renewed motions were made on "complete" and additional papers; nonetheless, all the motions were denied with a statement that they were merely for "reargument". In the meantime, counsel for respondents chose to proceed with his appeal from the order of Justice Backer of April 28, 1970 and again, as he did in many other complaint and some other papers. A motion to dismiss the appeal was denied and application made to consolidate the appeal with other pending appeals. In January

1971, counsel for petitioners who was cautioned, as the records below show, by prior eminent counsel who had appeared on prior appeals and some others "not to show his face in the Appellate Division", had no choice but to do so. The prediction was fulfilled and he was not only slapped, but atrociously kicked, to boot.

His endeavor to argue and convince that Court, that the Equity Action and the adjudication thereof so that it would not be necessary to undergo the torture of an exercise in futility by spending days and nights on unread records and briefs on thirteen other appeals, was rebuffed.

On January 18, 1971, the Appellate Division affirmed the order of Backer, J. denying summary judgment was not available because of an order of preclusion; thus, leaving open as to whether the Equity Action is to repose on the mortuary of iniquity to scare away the Mandamus. On the morning of the very next day, January 19, 1971, counsel for respondents served and filed a note of issue and a statement of "readiness" of Fales Equity Action. This judicious document of readiness showed that "to be truthful and honest there is nothing really to try". It merely said that there was "absolute preclusion" but the (wicked) "plaintiffs' neglected to conduct pretrial proceedings, etc.

A motion was made returnable on January 27, 1971 to strike the case from tne calendar on the ground that the Fales Equity Action actually vanished but had an heir, to wit, the Mandamus* Proceeding which was entitled to a Jury trial.

In May 1971, the thirteen appeals appeared on the calendar in the Appellate Division with an allowance, despite urgent requests for at least an hour of only fifteen minutes for argument. Though in his record and brief on appeal counsel for respondents disclosed that the purpose of that appeal was to eliminate the references, yet on his argument in May he, with the aid of two Justices, concentrated on berating counsel for petitioners for not proceeding with the references! Yet, before the Court in May, one of the appeals involved was the order punishing counsel for contempt on the initiative of the Referee and the record related numerous instances of disorderly and criminal conduct by Zakrzewska, Zawisza and one Lazarr including intent to kill (with a trophy taken from the Referee's desk) Rager, and vituperation with lowest gutter names of the witnesses for petitioners, telephone and other ex parte friendly communications between the Referee and counsel for respondents and admission of pressure on the Referee - an intelligent man who would like to be decent and fair but orders are orders.

On June 17, 1971, the Appellate Division affirmed without any opinion the order of contempt, the order of Fein, J., allowing the conversion of the Equity complaint into Mandamus, the order of Markowitz, J., insisting on having departure through preclusion, and dismissed all the other

* We pray the Court forgive this seeming levity but all our strictly legal explanations seem to have impressed no one in the Appellate Division.

appeals as non-appealable within each a statement that it was "fully briefed and argued" and if appealable would have been affirmed. One of the orders of the Appellate Division - humorous as it sounds, if it were not really tortuous, recited the dismissal of an appeal from an order of September 26, 1970, which sought inter alia the adjournment of motions to Justice Murtagh in a manner indicating lack of any rationale on the part of counsel. The fact is that the motion was made as shown above while the matter was still subjudice before Justice Murtagh but it did not quite reach him on time.

On June 25, 1971, an application was made to the then Chief Judge Fuld of the Court of Appeals for a stay pending obtaining leave to appeal as to the contempt, which he declined because of non-finality. Counsel for respondents announced that he was going to proceed with the commitment unless the fine of five hundred dollars was paid. Bullock was then sick with serious economic and other problems. The counsel for petitioners was being persecuted on all sides suffering from the non-prosecuted embezzlements and similar tactics by some friends of counsel for respondents and was on the precipice of destruction. Faced with the continued repetition in the Courts that he could "not get the right time in Court" (not in slander but alas the truth) with the humiliating situation where all those noble, selfless people who joined the Foundation with faith in him were being convinced that they made a mistake engaging him and they should have listened to the "advice" not to engage him because of the aversion of some judges and big politicians against

him, yielded to the advice of Judge Fuld to agree at the insistence of counsel for respondents to the "discontinuance" of the Equity Action on condition that the contempt order would be vacated and the Mandamus Proceeding could go on. A handwritten stipulation was prepared by counsel for respondents to the effect (Appendix S, p194). He added, however, other provisions which in effect permitted the embezzlement of more Paderewski Foundation funds and whatever remained out of the United States Central Intelligence Agency for spying, etc. (Appendix T, p195). After the denunciation of counsel for petitioners in the Appellate Division in May 1971 for "dilatory tactics" as to the references , members of the Bar took advantages of it in other cases.

In June 1971 a letter was sent by the Referee to the counsel for respondents, with a copy to Justice Leff stating the latter instructed him not to proceed with any hearings pending the determination by Justice Leff of the matter he had before him. Thereafter, for several months counsel for respondents continued to write letters to Justice Leff - at first nudging him to decide the motions submitted to him on January 27, 1971 and then stating clearly that he had no jurisdiction whatever because of the stipulation of June 25, 1971, and that the matter be left in the hands of the Referee as to the Zawisza Procedding because there was nothing else before Justice Leff! A notice in the New York Law Journal stated that no motions could be made before Justice Leff without the permission of his secretary. On November 4, 1971, a lengthy conference took place before Justice Leff (Appendix U, p195-217). It is shown there clearly that both Bullock and

Rager called the Justice's attention to the undecided motion, demonstrated that they had important motions to make and insisted that Mandamus is the only proceeding that could be tried.

Page 55, Court Stenographer's Minutes:

Mr. Bobbe (counsel for respondents): But this is a filed stipulation.

The Court (Justice Leff): I have a motion on that if that's the case.

Mr. Bobbe: No, there is no motion on it.

Mr. Bullock: There is a request for a motion.

The Court: In any event, whatever you want to have, if you to move that with respect to that date that we are not to try any issues, essentially you are going to have to try the Mandamus.

Page 57:

Mr. Bobbe: Could you transfer the Zawisza Proceeding?

Page 59:

Mr. Bobbe: And then I understand that Your Honor will cause the Zawisza Proceeding under Section 25 of the General Corporation Law.

> Mr. Rager: No. I asked Your Honor to reserve decision on that because it is included in the Mandamus Proceeding, the same issue.

Does this show "consent" on our part for the pretense of a trial of the dead Equity Action on January 17, 1972 and hoisting into it Zawisza and forgetting the motions? Did we agree to be crucified on January 17, 1972 and to be exposed to a mock trial?

On January 17, 1972 there was submitted to Justice Leff by counsel for respondents his motion for judgment on the counterclaim in the Mandamus. Counsel for petitioners submitted his cross motion seeking judgment in Mandamus, renewing his motion for a supplemental petition, the vacatur of the stipulation or of the contempt order and restitution of the fine of five hundred dollars which Bobbe had extracted after the stipulation was signed under threat of commitment. The motion further requested the long delayed discovery and a Jury trial and also a decision on the motion submitted on January 27, 1971. Justice Leff entertained and denied the motion by the respondents but refused to adjudicate the cross motion by the petitioners and directed the Court stenographer to mark it "FOR IDENTIFICATION" and it had been so marked and undetermined ever since.

Only three days, as ascertained later, before January 17, 1972, Justice Leff instructed the Referee to turn over to him the whole file and to terminate the references. From the conduct of the attorney for respondents, his notice to produce (in Zawisza only) his findings of fact and conclu-

sions of law, also in Zawisza, prepared before January 17, 1972, it was obvious that he came to Court fully assured there would be no trial of the Mandamus but only a trial in Zawisza. The attorney for petitioners brought with him to Court a counsel, a classmate of the attorney for respondents, realizing that there was a scheme actually to try a case against him, but the request by that attorney for an adjournment was refused. Counsel objected to the conduct of any trial which Justice Leff insisted on conducting on the ground that due process was violated.

We quote only a few parts of the "trial" on January 17, 1972:

Page 3, Court Stenographer's Minutes:

Mr. Rager: ...I have an application

The Court: I am not hearing that. I am hearing the trial (sic!).

Mr. Rager: There are motions.

The Court: I am not hearing any motions.

Mr. Rager: Your Honor permitted us to make motions.

The Court: I am ignoring that motion.

Mr. Rager: It is important for due process of law that a motion we have been trying to make since 1970, denied, with leave to renew by Justice Levey...Justice Fino,

The Court: I will stop you right now - stop wasting my time.

Mr. Rager: We asked Your Honor for privilege to make motions and Your Honor permitted them to made today. Mr. Bobbe has one for judgment in Mandamus...and we have a cross motion for judgment...and if denied...to present an amended petition... It is elementary for due process of Law that if one goes to trial one must know what the pleadings are. We move to strike the answer in the Mandamus Proceeding on the ground that it is sham and scandalous and making a party to this proceeding that was before Mr. Justice Levey, who on May 19th denied our motion with leave to renew.

We renewed that motion before Justice Fino in September. He denied it with leave to renew it sooner, but the Law Journal says you cannot make any motions without permission of Mr. Green, your secretary. We asked him for that permission. He said it would be made before you.

When we were before you, you said that motions could be made today.

I cannot go to trial when I don't know if the answer, which is scandalous inferentially by Justice Saypol, who struck the same scandalous allegations which make me a party to it, and I will have to be a witness and if I am a witness I need a trial counsel and Mr. Bobbe by serving these motion papers for today,

which, apparently, he did not submit to your Honor, so I am submitting them, and I have a cross motion; and in the interest of justice, first of all it is important to know what the title of the action is -- and we have had a very improvident unfair deal...

I cannot go to trial and, moreover, all the facts in the Zawisza Proceeding are included in our Mandamus Proceeding.

We cannot go to trial today and in the interest --

The Court: Let me just tell you, you are under a misapprehension. This trial is under way right now. The only thing I ask you to do is call your first witness.

Mr. Rager: Will Your Honor accept my papers.

The Court: I am submitting a cross motion entitled Dorothy T. Fales, et al., plaintiffs, against Edward S. Witkowski, et al., defendants, under the Index Number 11339-67, Equity Action for an accounting, injustice, etc.; under the further title of Dorothy T. Fales, et al., v. George J. Suski, Leon Zawisza, et al., respondents, under the same index number as the Fales cited before 11339-67; and also under the title Leon Zawisza, petitioner, against The Paderewski Foundation, Inc., et al., respondents, Index Number 15371-68. Annexed to it there are letters from Mr. Bobbe and Bullock and me to Judge Levey seeking, by Mr. Bobbe, a conference and then

withdrawing it; seeking a trial before Judge Levey and then withdrawing it; denying and admitting his jurisdiction; and our letters to Judge Levey seeking permission to vacate the stipulation of discontinuance under the title of Fales, et al., Edward S. Witkowski, et al., to be relieved of that stipulation;

The Court: Just mark it and let me see it. If they will be before the Court I will look at them.

Mr. Rager: Also attached are papers, a proposed amended supplemental petition and mandamus.

(Cross motion, etc. marked Petitioner's Exhibit 2 for identification.)

Mr. Rager: I am also submitting under the above mentioned titles my affirmation in opposition to Mr. Bobbe's motion, returnable today, where he seeks judgment by default and in it I repeat my request for a jury trial because we are entitled to it in a mandamus proceeding and because of prejudice by several judges in this Court and in the Appellate Division, created by Mr. Bobbe,**

Mr. Bobbe: I would like to make comment appropos of Mr. Rager's statement today about Article 78 proceeding, the mandamus proceeding.

Mr. Justice Levey denied the petition when it came before him, without prejudice to

renewal after the completion of this Zawisza case, which was then before the referee, which he instructed should proceed before the referee.

***

So that the disposition of the Zawisza automatically terminates any necessity for going any further into the mandamus proceeding.**

The Court: You have got a stipulation of discontinuance.

Mr. Bobbe: Yes.

The Court: So why bother with what the subsidiary proceedings are?

We made the same objection throughout the litigation on many occasions. It is included at length in the briefs in the Appellate Division on the appeals decided on June 17, 1971. We repeated that in the applications for reargument in the Appellate Division and included that in the petition in Mandamus in the Appellate Division and on three motions for reargument - one contained in affirmation of November 24, 1972, submitted to the Appellate Division in which a request was made in case of denial of reargument to present thirteen questions to be certified to the Court of Appeals and in each there were statements similar to those as embodied in the Questions Presented to this Court.

Prior to the decision on January 17, 1972

rendered off the Bench, Justice Leff to whom counsel for respondents stated in an inquiring tone that the decision in Zawisza disposes of the Mandamus Proceeding, replied:

"WHY BOTHER WITH THE MANDAMUS?"

At the conclusion of the trial, Justice Leff inquired whether there was a membership record. The counsel for respondents gave an evasive answer to the effect that he though there was a list and that he would procure it. On March 1, 1972, Justice Leff with an opinion in which there were marshalled out of context certain statements, tried to create an impression that there was a consent as to the manner of his proceedings on January 17, 1972. The minutes of the hearing on November 4, 1971, utterly refuted this.

The judgment recites that the Fales, et al., plaintiffs v. Witkowski, et al., defendants case came before Justice Leff by an order of the Appellate Division, the implication that it came to him as a result of a separate order is not correct. At the time the statement of readiness was filed in January 1971, the Rules of the Appellate Divisi on provided that when cases were ready they were to be assigned to certain parts and stay there. The fact is that there was no case existing or ready. After making that statement the judgment recites that by consent the Zawisza Proceeding "as related" to the Fales case (throughout the proceeding the counsel for respondents maintained otherwise) is consolidated with it for trial.

How can one consolidate something with

nothing?

Then the judgment recites that since there was a stipulation of discontinuance signed and filed with the Clerk of the Court (August 1971) and Fales Equity case declared terminated and the injunction vacated (it never had any effect and the funds of the Paderewski Foundation from the banks were withdrawn shortly after the stipulation of discontinuance was filed). The judgment then grants the Petition of Zawisza and under it gives to Zawisza, what he never dreamed of asking for and what no Court in New York State has the power to do - to wit, voiding a Certificate of Incorporation, voiding all By-Laws, no matter when they were adopted, voiding all the acts of petitioners herein since February 13, 1967 though the Zawisza Proceeding and other papers submitted in Court during the litigation clearly show including the respondents notice for the illegal meeting on June 5, 1967, that the petitioners were duly elected officers and directors on March 6, 1967 with a proviso added by the contestants that they wer only elected for three months, to wit, till June 6, 1967. Yet, the judgment voids everything since February 13, 1967, with no such date anywhere in the record. It voids the retainer of Forman Bullock, deprives him of his fees and lien without any work against him in the petition. It adjudicates rights of Rager and brands him guilty of fraud though there is nothing in the petition, since the paragraphs on that score were stricken by a prior order of the Court to justify it; moreover, Rager was not a party in the Zawisza Proceeding, nor was there any request in the prayer for relief against him. Last but not least, Zawisza the thief, embezzler, is appointed

as an impartial officer of new elections.

If there ever was a violation of Constitutional rights of an attorney or for that matter of any human being, who is wantonly, capriciously adjudged as guilty of being incapable to ply his trade, no matter how humble it is, here is one.

REASONS FOR GRANTING THE WRIT

We believe that the Courts below, both the Appellate Division and the State Supreme Court, have so grossly violated the elementary Constitutional rights of all the petitioners and, contrary to all established rules of fair, impartial procedure, have not only deprived them of the elementary right to have their grievances tried but have deprived them to boot of their property, reputation without any semblance of any due process of law.

As to the Paderewski Foundation, the treatment of which alone is a matter of immense public interest to the People of the United States, caused in effect its death by voiding its Amended Certificate of Incorporation without any lawful procedure therefor and contrary to the prevailing law and its interpretation and enforcement in the State of New York.

As to Forman Bullock, here is a situation where an attorney who has labored in behalf of a client, adjudged without any hearing as incapable to act as such, punished for contempt and finally in a proceeding limited solely to an adjudication of validity of corporate elections without one word against him, either in the process giving the Court (in this instance an order to show cause) jurisdiction of his person or in the Petition for relief under that statute nor in the prayer for relief nor with any testimony whatever against him, adjudged guilty of grave wrongs and deprived of any right to compensation for his labor and also adjudged that all his acts in behalf

of the client (without any recital or description of the acts attributed to him) are wrong.

As to Petitioner Rager, the records in the Courts below are replete with venomous invectives, denunciations against Rager and continued assertions by counsel for respondents that judges dislike or hate him, referring continually to some totally unrelated litigation with the inference of alleged improprieties therein, an order of contempt is granted against Rager despite rulings by two justices of the State Supreme Court that in all fairness he was entitled to a hearing and directing a Referee who initiated the alleged contempt, not committed in his presence, out of Court while motions were pending, to disqualify himself for prejudice and bias and other reasons, punished for contempt without any hearing and fined $250. The latter applies to Bullock also.

As to the Paderewski Foundation, here is a Foundation created in the name of a truly universally admired great patriot, statesman, humanitarian and artist, known for his devotion to freedom, justice and democracy. A Non-Profit Membership Corporation is formed in his name and used for eighteen years for personal gain of a few individuals through misappropriation of its funds and engaging the Foundation in political activities including spying in foreign countries with funds received illegally from a Branch of the United States Government. A judgment is rendered against it in the aforesaid proceeding under the Statute of Limited Jurisdiction - not only declaring the forfeiture of its amended Charter but reverting it to its former illegal status where for eighteen years it did not have any

viable By-Laws and functioned unlawfully through directors or trustees appointed at will without any membership meetings.

The litigation is deliberately splintered into several lawsuits (a matter of public interest), purposely conducted by the respondents under varying, confusing titles with parties against whom proceedings were duly discontinued or dead, continued as such thereafter and all attempts by the petitioners to proceed only in one lawsuit where all the fundamental issues could be tried are frustrated through non professional unethical tactics of counsel for respondents with the approval of the Courts below.

Proceedings are continued both in a non existent action which was superseded by an order of the State Supreme Court, affirmed by the Appellate Division, and yet the Court arbitrarily refuses to try that case but instead assumes jurisdiction of the case which the valid proceeding superseded.

There is overwhelming evidence of denial of procedural rights established as valid in all its leading adjudications and according to its rules and denying it to the petitioners, e.g., precluding the petitioners from offering evidence as to the material allegations of its complaint without having it in the record before the Court. All this and much more without any recourse in the Courts below and a final judgment reciting, contrary to the record, a consent by it to try a non-existent case declaring the validity of a stipulation which acknowledged its discontinuance, and ignoring the specific conditions in it thatonly the Mandamus Proceeding and not the non-existent action

should be tried and that the aforesaid order of contempt be vacated.

Repeated motions to adjudicate the validity of pleadings are denied with leave to renew and with the final failure to consider the motion or adjudicate it and merely marked it "For Identification".

The same applies to a motion made in the Court below pending undetermined for over a year and to strike the case from the calendar because of its non-existence and then refusing to entertain the motion and proceeding with the trial in a proceeding in which on its face the rights of the petitioners cannot be adjudicated and granting judgment therein on a pleading for matters not contained therein, e.g., voiding the Certificate of Incorporation.

We know of no case where any American Judicial Tribunal ordered or sanctioned a corporate or other election where a contestant, a party to the proceeding in whose favor the judgment is rendered and entered and who is charged with mis-appropriation of funds and the infliction of other serious wrongs against the corporate body whose rights are involved in the litigation is appointed by the Court as a non-partial umpire of new elections, the right to appoint tellers and determine as to who is entitled to vote.

The individual petitioners, volunteers, substantial contributors to revive the Paderewski Foundation after it was concededly practically dead in December 1966, are branded by the judgment as unfit. All their acts

as members, officers and directors from February 13, 1967 are declared void despite plain admissions in the record that at the very least they were duly elected and functioning as officers and directors till June 6, 1967.

Again here a public interest is involved as to whether charitable organizations should be used as a cloak for frauds, the perpetration of other crimes, and as a pretense to receive financial gain for those in control. There is a just public clamor that our courts are overburdened with litigation and here, due to the gross violations of procedural law, for over six years at least twenty justices of the State Supreme Court are burdened with considering fractions of papers because counsel for respondents deliberately splinters various motions, many while Court stays are in effect, numerous appeals necessitated caused also by inconsistent decisions of the Appellate Division, by its permissiveness toward repeated contempts by counsel for respondents and deciding appeals on incomplete records contrary to its established rules.

The question is whether this Court should under all these circumstances assume jurisdiction and grant relief for there is none to be had in the Courts below - at least, as long as Petitioner Rager is counsel.

There is ample overwhelming evidence that the Petitioners repeatedly objected to the failure of due process and invoked relief under the Fourteenth Amendment of the United States Constitution, culminating in the State Supreme Court before the trial resulting in the judgment and in various motions and briefs and records submitted in the Appellate Division.

That the Paderewski Foundation is the principal aggrieved party should be recognized here under the decision of this Court in Ross v. Bernhard, 396 U.S. 531, where it was held that a suit to enforce a corporate cause of action by a stockholder for the recovery for the benefit of the corporation and though not named as a party, the corporation is the real party in interest.

It was also so held in a decision by Justice Holmes in Fleitman v. Welsbad, 240 U.S. 27. These cases are cited and followed ina recent New York decision Fedoryszyn v. Weiss, 62 Misc 2d 889.

That the Courts below have applied to the case at Bar a standard solely for it and not consonant with its uniform decisions but contrary to them is contained in the leading case In Re Faehndrich 2 NY 2d 468, involving the interpretation of the power of the State Supreme Court under Section 25 of the General Corporation Law under which the Special Proceeding in this case, initiated by one Zawisza, was tried on January 17, 1972 and in which the various adjudications voiding the Certificate of Incorporation, By-Laws, adjudging the rights of all the Petitioners and those of the attorneys Bullock and Rager, the Court clearly held that the purpose of the Section is solely "to provide a summary review of a contested election, free from procedural complications of a primary proceeding". Counsel for respondents quoted that very case when he opposed the granting by the New York Court of Appeals of leave to appeal from the order of the Appellate Division, which affirmed the order of the State Supreme Court, dismissing a counterclaim against Zawisza, charged in it with misappropriation (supra),

Leave to appeal was denied and then counsel proceeded for several years with his well contrived scheme, approved by the State Court, to eliminate both the Equity Action, to prevent any adjudication of the Mandamus Proceeding which superseded it and in which Zawisza was a party respondent to have all the issues conceived by him tried there.

The record in the Court below shows the judgment entered to be void and under the New York Civil Practice Act and Rules 5015 and the decisions thereunder, especially in the Appellate Division involved herein, plainly state that a void judgment can be attacked at any time.

The records show clearly that the Supreme Court arbitrarily and capriciously declined to exercise a jurisdiction in the Mandamus Proceeding and on motions pending before it and on the contrary entertained jurisdiction as to which it has none.

In Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine, et al v. Michaux, et al, this Court held that even if a State Court was right in adjuding in its judgment as to certain rules, yet if there is either laches or acquiesence on its part in respect to violation of rights the jurisdiction of this Court could be involved.

In Leathe v. Thomas, 207 U.S. 99, this Court stated giving due recognition to its well settled Rule that it should consider only Federal questions significantly

stated that "when the record discloses such other and completely adequate grounds this Court commonly does not inquire whether the decision upon them was or was not correct..... there might be cases where .... "it would be apparent that a Federal question was involved whether mentioned or not ..." "If the ground of decision did not appear and that which did not involve a Federal question was so palpably unfounded that it could not presumed to have been entertained, it may be that this Court would take jurisdiction. "

Though we believe that we have raised a Federal question abundantly yet if should this Court not agree on this score the record overwhelmingly shows that at the least the decision, the rulings and the failure to act by the Court which rendered the judgment here are so palpably wrong as to invoke this Court's jurisdiction.

To use the language of this Court in Leathe v. Thomas

> "really must have been against" the petitioners "and was seeking to evade the jurisdiction of this Court".

This is shown by the extracts from the Court stenographer's minutes supra.

In Young v. Ragen 337 U.S. 236, this Court held that

> "more than a question of State procedure is involved when a State Court of last

"resort closes the door to any question of a claim of denial of a Federal right."

How could we bring up for review on any appeal a motion marked "FOR IDENTIFICATION"?

CONCLUSION

The Court's indulgence and forgiveness is requested for any inadvertent departure from strict compliance of its Rules in preparing this Petition and Appendix. Counsel for Petitioners who for years in various capacities helped hundreds of members of the profession and appeared for a leading Association of the Bar as amicus curiae in a case vital to the Bar has been unable, because of a persistent campaign against him and petitioner Edwina Rager aimed at his utter destruction not only as an attorney but a human being, to procure the aid of a counsel with experience in this Court and consequently he is appearing pro se in addition to appearing for the other petitioners. It is very difficult under daily stress and shattered health to boot with shortage of funds due to the practical destruction of his law practice to be purely objective, as he should.

It is hoped and prayed that the Petition and Appendix will be entertained and the Writ granted but if there are any omissions which the Court considers important, leave is begged to present a supplemental amended petition and in that event at least thirty days time, for this is being completed after three weeks of days and nights with hardly any rest or sleep and leave of sixty days to reply properly to any misquotations as they occurred throughout the litigation.

The Petitioners most fervently pray for the interposition by this Court and the granting of the Writ and, if possible, summary reversal.

March 19, 1974

Respectfully submitted,

Edward Rager
Counsel for Petitioners
and Appearing Pro Se
29 Maple Street
Blue Point, New York 11715

APPENDIX A

Constitutional and Statutory Provisions Involved

Amendment XIV to the Constitution of the United States; Section 1 states:

> "***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Civil Rights Law of New York; Article I - Bill of Rights, states:

> Section 2 - Trial by Jury
> "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.***"
>
> Section 3 - Freedom of Worship; Religious Liberty
> "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind***"
>
> Section 11 - Equal Protection of Laws; Discrimination in Civil Rights Prohibited
> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof***. Adopted by Constitutional

Convention of 1938 and approved by vote of the people November 8, 1938."

Judiciary Law of New York; Article 19, states:

Section 753 - Power of Courts to Punish for Civil Contempts

"A. A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:

1. An attorney, counsellor, clerk, sheriff, coroner, or other person, in any manner duly selected or appointed to perform a judicial or ministerial service, for a misbehavior in his office or trust, or for a wilful neglect or violation of duty therein; or for disobedience to a lawful mandate of the court, or of a judge thereof, or of an officer authorized to perform the duties of such a judge.

2. A party to the action or special proceeding, for putting in fictitious bail or a fictitious surety, or for any deceit or abuse of a mandate or proceeding of the court.

3. A party to the action or special proceeding, an attorney, counsellor, or other person, for the non-payment of a sum of money, ordered

or adjudged by the court to be paid, in a case where by law execution can not be awarded for the collection of such sum except as otherwise specifically provided by the civil practice law and rules; or for any other disobedience to a lawful mandate of the court.***"

Section 754 - Special Proceeding to Punish for Contempt Punishable Civilly

"Sections seven hundred and fifty, seven hundred and fifty-one, and seven hundred and fifty-two, do not extend to a special proceeding to punish a person in a case specified in section seven hundred and fifty-three. In a case specified in section seven hundred and fifty-three, or in any other case where it is specially prescribed by law, that a court of record, or a judge thereof, or a referee appointed by the court, has power to punish, by fine and imprisonment, or either, or generally as a contempt, a neglect or violation of duty, or other misconduct; and a right or remedy of a party to a civil action or special proceeding pending in the court, or before the judge or the referee, may be defeated, impaired, impeded, or prejudiced thereby, the offense must be punished as prescribed in the following sections of this article. L. 1909, c. 35."

Section 755 - When Punishment May Be Summary

"Where the offense is committed in the immediate view and presence of the court, or of the judge or referee, upon a trial or hearing, it may

be punished summarily. For that purpose, an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor. Such order is reviewable by a proceeding under article seventy-eight of the civil practice law and rules. L.1909, c. 35; amended L.1947, c. 900, § 4; L.1962, c. 310, § 241, eff.Sept. 1, 1963."

Section 759 - Order to Show Cause or Issue of Warrant When Contempt Committed Before Referee

"An order to show cause may be made, or a warrant may be issued, as prescribed in section seven hundred and fifty-seven, by a referee appointed by the court, where the offense is commited upon the trial of an issue referred to him, or consists of a witness's non-attendence,[1] or refusal to be sworn or to testify, before him. The order or warrant may, in the discretion of the referee, be made returnable before him, or before the court. Where it is made returnable before the referee, he has all the power and authority of the court, with respect to the motion or special proceeding, instituted thereby. L.1909, c. 35."

General Corporation Law of New York; Article 2

Section 25 - Powers of Supreme Court

Respecting Elections

"Upon the application of any member aggrieved by an election, and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term thereof shall forthwith hear the proofs and allegations of the parties, and confirm the election or order a new election, as justice may require." (L.1929, c. 650) General Corporation Law repealed L.1973, c. 451, effective September 1, 1974.

Membership Corporation Law of New York; Article 5; Section 40 - Members

"Each person signing the certificate of incorporation of a membership corporation and each person admitted to membership therein pursuant to law or its by-laws, shall be a member of the corporation until his membership shall terminate by death, resignation, or otherwise."

Membership Corporation Law of New York; Article 6; Section 45 - Officers and Directors

"***Except a young men's christian association, a membership corporation in its certificate of incorporation or in an amending certificate pursuant to section thirty may provide for the appointment of individual or corporate trustees of any or all of its property, and confer on such trustees such of the powers, duties or obligations of the directors of such of the

powers, duties or obligations of the directors of such corporation in relation to the care, custody or management of such property as may be deemed advisable; and for the manner of appointment of their successors.

***Except a young men's christian association, a membership corporation in its certificate of incorporation or in an amending certificate pursuant to section thirty may provide for the appointment of individual or corporate trustees of any or all of its property, and confer on such trustees such of the powers, duties or obligations of the directors of such corporation in relation to the care, custody or management of such property as may be deemed advisable; and for the manner of appointment of their successors. As amended L.1958, c.542, eff. April 10, 1958."

New York Membership Corporations Law repealed L.1969, c. 1066, eff. September 1, 1970--Superseded Not For Profit Corporation Law.

New York Civil Practice Law and Rules; Article 78- Proceeding Against Body or Officer

Section 7801 - Nature of Proceeding
"Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article. Wherever in any statute reference is made to a

writ or order of certiorari, mandamus or prohibition, such reference shall, so far as applicable, be deemed to refer to the proceeding authorized by this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

1. which is not final or can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed; or

2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court."

Section 7802 - Parties

"(a) Definition of "body or officer." The expression "body or officer" includes every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.

(b) Persons whose terms of office have expired; successors. Whenever necessary to accomplish substantial justice, a proceeding under this article may be maintained against an officer exercising judicial or quasi-judicial

functions, or member of a body whose term of office has expired. A notice of the proceeding shall be served upon the attorney-general, and any party may join the successor of such officer or member of a body or other person having custody of the record of proceedings under review.

(c) Prohibition in favor of another. Where the proceeding is brought to restrain a body or officer from proceeding without or in excess of jurisdiction in favor of another, the latter shall be joined as a party.

(d) Other interested persons. The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene."

Section 7803 - Questions Raised

"The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law, or

2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or

4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the

entire record, supported by substantial evidence."

Section 7804 - Procedure

"***

(g) Hearing and determination; transfer to appellate division. Where an issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall make an order directing that the proceeding be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced; the court may, however, itself pass on objections in point of law. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

(h) Trial. If a triable issue of fact is raised in a proceeding under this article, it shall be tried forthwith. Where the proceeding was transferred to the appellate division, the issue of fact shall be tried by a referee or at a trial term of the supreme court and the verdict report or decision rendered after the trial shall be returned to, and the order thereon made by, the appellate division."

Article 41 - Trial by Jury; Section 4101 - Issues Triable By a Jury Revealed Before Trial

"In the following actions, the issues of fact shall be tried by a jury unless a jury trial is waived or a reference is directed under section 4317, except that equitable defenses and equitable counterclaims shall be tried by the court:
1. an action in which a party demands and sets forth facts which would permit a judgment for a sum of money only;
2. an action of ejectment; for dower; for waste; for abatement of and damages for a nuisance; to recover a chattel; or for determination of a claim to real property under article fifteen of the real property actions and proceedings law; and
3. any other action in which a party is entitled by the constitution or by express provision of law to a trial by jury."

Article 50 - Judgments Generally; Rule 5015 - Relief From Judgment or Order
"(a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:
1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or
2. newly-discovered evidence which, if introduced at the trial, would probably have

produced a different result and which could not have been discovered in time to move for a new trial under section 4404, or
3. fraud, misrepresentation, or other misconduct of an adverse party; or
4. lack of jurisdiction to render the judgment or order; or
5. reversal, modification or vacatur of a prior judgment or order upon which it is based.
(b) On stipulation. The clerk of the court may vacate a default judgment entered pursuant to section 3215 upon the filing with him of a stipulation of consent to such vacatur by the parties personally or by their attorneys.
(c) Restitution. Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal."

Article 57 - Appeals to the Appellate Division; Rule 5711 - Where Appeal Heard
"Except as provided in subdivision (d) of rule 511, an appeal to the appellate division shall be brought in the department embracing the county in which the judgment or order appealed from is entered and there heard and determined unless, in furtherance of justice, the appeal is sent to another department."

APPENDIX B

By-Laws of The Paderewski Foundation, Inc.
Adopted on November 6, 1948

Article Three - Membership
"Membership in this organization shall be open to all who are interested in education and culture.

In addition to said membership and Board of Directors may create and abolish, or change various additional classes of non-voting membership, and fix their dues."

Article Seven - Board of Directors
"***The directors to be chosen for the ensuing year shall be chosen at the annual meeting of this organization in the same manner and style as the officers of this organization and they shall serve for a term of 2 years.***"

APPENDIX C

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 26, 1972.

Present

Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Francis T. Murphy, Jr., Justices.
Louis J. Capozzoli.

In the Matter of The Paderewski Foundation, Inc. on the petition of Dorothy T. Fales, et al.,

Petitioners, 5892
(M-10438;
M-10439;
M-10398)

-against-

George J. Suski, Leon Zawisza, et al.,

Respondents.

For Judgment under Article 78 CPLR

On the Petition of Fales, et al., Theresa Cannone and others similarly situated, members of The Paderewski Foundation, Inc. and Forman Bullock and Edward Rager, aggrieved parties,

For Judgment of Restraint against The Supreme Court of the State of New York and the Honorable Justices James J. Leff and Edward J. Greenfield as Respondents and directing the disposition of motions made by the Petitioners in above-entitled

Mandamus Proceeding pending in the Supreme Court of the State of New York, New York County, made on January 27, 1971 and January 17,1972, and a Trial thereof by Court and Jury.

The above-named Petitioners, Theresa Cannone, et al., having presented a notice of application and petition to this Court praying for an order, pursuant to Article 78 of the Civil Practice Law and Rules, restraining respondents from taking any further steps in connection with the affairs of The Paderewski Foundation, Inc., and directing the vacatur of a certain order and judgment, and for other relief.

And Louis J. Lefkowitz, Attorney General of the State of New York, attorney for respondents Supreme Court of the State of New York and Justices James J. Leff and Edward J. Greenfield, having served and filed upon petitioner a notice of cross-motion to dismiss the aforesaid petition,

And Sidney S. Bobbe, attorney for respondents George J. Suski, Leon Zawisza, et al., having served and filed upon petitioner a notice of motion to dismiss the aforesaid petition or, in the alternative, to strike as scandalous and prejudicial certain paragraphs of such petition,

Now, upon reading and filing the notice of application, dated August 31, 1972, with proof of due service thereof, and the petition of Theresa Cannone, et al., verified August 31, 1972, and the statements of Forman Bullock and Edward Rager in support of the petition; the notice of

cross-motion to dismiss the petition, with proof of due service thereof, and the affidavit of Ilene J. Slater, sworn to September 29, 1972, in support of said cross-motion and in opposition to the petition, and the statement of Edward Rager in opposition to the cross-motion, and the notice of motion to dismiss the petition and for other relief, with proof of due service thereof, and the statement of Sidney S. Bobbe in support of said motion and in opposition to the petition, and the statement of Edward Rager in opposition to the motion; and after hearing Mr. Forman Bullock for the petition, Ilene J. Slater, Assistant Attorney General, opposed to the petition and for the cross-motion; and Mr. Sidney S. Bobbe opposed to the petition and for the motion; and due deliberation having been had thereon,

It is unanimously ordered that the application of Petitioners be and the same hereby is denied, the cross-motion of Hon. Louis J. Lefkowitz, Attorney General of the State of New York and the motion of respondents George J. Suski, et al., be and the same hereby are granted to the extent of dismissing the petition, without costs and without disbursements.

ENTER:

HYMAN W. GAMSO
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 11, 1973.

Present
Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Francis T. Murphy, Jr., Justices.
Louis J. Capozzoli.

In the Matter of The Paderewski Foundation, Inc. on the petition of Dorothy T. Fales, et al.,

Petitioners,

-against- M-11167

George J. Suski, Leon Zawisza, et al.,

Respondents.

For Judgment under Article 78 CPLR

The above-named petitioners having moved this Court for leave to reargue the above-entitled proceeding, their application therein having been denied and the petition dismissed by order of this Court entered on October 26, 1972 (5892, M-10438, M-10439, M-10393), and for other relief, or, in the alternative, for leave to appeal to the Court of Appeals,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statements of Edward Rager in support of said motion, and the memorandum of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Edward Rager for the motion and Mr. Sidney S. Bobbe opposed,

It is ordered that said motion be and the same hereby is, in all respects, denied with $20 costs.

ENTER:

Hyman W. Gamso,
Clerk.

APPENDIX D

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 26, 1972

Present

Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Francis T. Murphy, Jr. Justices.
Louis J. Capozzoli,

Dorothy T. Fales, et al.,

Plaintiffs, (M-10272-A Order Granting Motion to Dismiss Appeal)

-against-

Edward S. Witkowski, et al.,

Defendants.

In the Matter of the Paderewski Foundation on the Petition of Leon Zawisza,

Petitioner.

In the Matter of The Paderewski Foundation, Inc. on the Petition of Dorothy T. Fales, et al.,

Petitioners-Appellants

-against-

George J. Suski, et al.,

Respondents-Respondents.

For Judgment under CPLR Article 78.

Edward Rager, etc. Appellant.

An appeal having been taken to this Court by the petitioners-appellants and appellant Rager from the order of the Supreme Court, New York County, entered on March 1, 1972,
And the respondents having moved to dismiss said appeal,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statement of Sidney S. Bobbe
in support of said motion, and the statement of Edward Rager
in opposition thereto,
and after hearing Mr. Sidney S. Bobbe
for the motion, and Mr. Edward Rager
opposed,

It is ordered that the motion to dismiss said appeal be and same hereby is granted with $20 costs.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 11, 1973.

Present
Hon. Harold A. Stevens, Presiding Justice.
Arthur Markewich,
Francis T. Murphy, Jr., Justices.
Louis J. Capozzoli.

Dorothy T. Fales, et al.,

Plaintiffs,

-against-

Edward S. Witkowski, et al.,

Defendants.

In the Matter of the Paderewski Foundation on the Petition of Leon Zawisza,

Petitioner. M-11166

In the Matter of the Paderewski Foundation, Inc. on the Petition of Dorothy T. Fales, et al.,

Petitioners-Appellants

-against-

George J. Suski, et al.,

Respondents-Respondents

For Judgment under CPLR Article 78.

Edward Rager, etc., Appellant

The above-named appellants having moved this Court for consolidation of all motions pertaining to the Paderewski Foundation, Inc. returnable on January 2, 1973, for reargument of Motion No. M-10272-A, which motion was granted by order of this Court entered on October 26, 1972, and for other relief, or, in the alternative, for leave to appeal to the Court of Appeals.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statements of Edward Rager in support of said motion, and the memorandum of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Edward Rager for the motion and Mr. Sidney S. Bobbe opposed,

It is ordered that said motion be and the same hereby is, in all respects, denied with $20 costs.

ENTER:

Hyman W. Gamso,
Clerk.

APPENDIX E

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 26, 1972.

Present

Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Francis T. Murphy, Jr., Justices.
Louis J. Capozzoli.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants

-against-

Edward S. Witkowski, et al.,
Defendants-Respondents.

Edward Reger, Forman Bullock, Theresa Cannone and other members of the Paderewski Foundation, Inc., aggrieved by the order of Justice Greenfield of August 4, 1972,
Appellants.

In the Matter of The Paderewski Foundation, Inc., on the Petition of Leon Zawisza,
Petitioner-Respondent,

-against-

The Paderewski Foundation, Inc., M-10440
Dorothy T. Fales, et al.,
Respondents-Appellants,

Section 25 General Corporation Law.

In the Matter of the Paderewski Foundation, Inc., on the Petition of Dorothy T. Fales, et al.,

Petitioners-Appellants,

-against-

George J. Suski, Leon Zawisza, et al.,

Respondents-Respondents.

For Judgment under Article 78 CPLR,
Edward Rager, Appellant, Aggrieved Party.

The above-named appellants having moved this Court for an order transferring to the Appellate Division, Third Department, their appeals from orders of the Supreme Court, New York County, entered on March 1, 1972 and August 4, 1972, respectively, together with certain records as set forth in the notice of motion, and for other relief.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statement of Forman Bullock in support of said motion and the statement of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Forman Bullock for the motion and Mr. Sidney S. Bobbe opposed.

It is ordered that said motion be and the same hereby is, in all respects, denied with $20 costs.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 11, 1973.

Present

Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Francis T. Murphy, Jr., Justices.
Louis J. Capozzoli.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants

-against-

Edward S. Witkowski, et al.,
Defendants-Respondents.

Edward Rager, Forman Bullock, Theresa Cannone and other members of The Paderewski Foundation, Inc., aggrieved by the order of Justice Greenfield of August 4, 1972,
Appellants.

In the Matter of The Paderewski Foundation, Inc., on the Petition of Leon Zawisza,
Petitioner-Respondent,

-against- M-11165

The Paderewski Foundation, Inc., Dorothy T. Fales, et al,
Respondents-Appellants,

Section 25 General Corporation Law.

In the Matter of The Paderewski Foundation, Inc., on the Petition of Dorothy T. Fales, et al.,

Petitioners-Appellants

-against-

George J. Suski, Leon Zawisza, et al.,

Respondents-Respondents,

For Judgment under Article 78 CPLR,
Edward Rager, Appellant, Aggrieved Party.

The above-named appellants having moved this Court to reargue Motion No. 10440, which motion was denied by order of this Court entered on October 26, 1972, and for other relief, or, in the alternative, for leave to appeal to the Court of Appeals,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the atatements of Edward Rager in support of said motion, and the memorandum of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Edward Rager for the motion and Mr. Sidney S. Bobbe opposed,

It is ordered that said motion be and the same hereby is in all respects, denied with $20 costs.

ENTER:

Hyman W. Gamso,
Clerk.

APPENDIX F

STATE OF NEW YORK
in Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the 21st day of November A.D. 1973.

Present, Hon. Stanley H. Fuld, Chief Judge, Presiding.

In the Matter of The Paderewski Foundation, Inc., on the Petition of Dorothy T. Fales & ors.,
Petitioners,
For a Judgment Pursuant to Article 78

Motion # 873

vs.

George J. Suski & ors.,
Respondents.

A motion for leave to appeal &c. to the Court of Appeals in the above cause having been heretofore made upon the part of the petitioners herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

James M. Falvin, Clerk

APPENDIX G

At an Individual Calendar Part held at Trial Term, Part V of the Supreme Court of the State of New York at the Courthouse in the Borough of Manhattan, City of New York, this 3rd day of February 1972.

Present
Hon. James J. Leff, Justice.

Dorothy T. Fales, also known as Mrs. Haliburton Fales, Haliburton Fales, George Englert, Isabel C. Englert, Sigmund H. Uminski, Mignon Zulinski and Edwina Rager, as Members, Directors and Officers respectively of The Paderewski Foundation, Inc. and each individually,

Plaintiffs,

-against-

Index No. 11,339-1967

Edward S. Witkowski, Jeanette Witkowska, George J. Suski, Henry C. Malon, Phyllis Bohleber, Aleksandra Wos, Wladyslaw Furka, Walter J. Bayer, Theodore E. Domaradzki, Leon Nadrowski, Mrs. Thaddeus DeLazarewicz, Anna Zakrzewska
-and-
The Paderewski Foundation, Inc.,

Defendants.

In the Matter of
The Paderewski Foundation, Inc.
on the Petition of
Leon Zawisza,
Petitioner,

Index No.
15,371-
1968

suing individually and on behalf of others similarly situated, pursuant to Section 25 of the General Corporation Law, to set aside a purported election of Directors and Officers at purported meetings held on June 29, 1967 and on or about June 28, 1968.

The first of the above entitled actions having been duly brought on for trial by Note of Issue filed on behalf of the defendants; and said action having been duly assigned to me for all purposes pursuant to the orders of the Appellate Division of the Supreme Court, First Department, establishing this individual Calendar Part of the Court; and this Court having on November 4th, 1971, directed that the trial thereof be held in this Part on January 17, 1972, at 9.30 a.m.; and the above-entitled proceeding on the petition of Leon Zawisza being a case related to the above-entitled action brought by Dorothy T. Fales, et al.; and this Court having therefore, pursuant to said orders of the Appellate Division, and upon consent of all parties, transferred to itself said Special Proceeding, and having directed that it be tried together with the above-entitled action of Fales vs. Witkowski;

And both said action and said special proceeding having been consolidated for trial, and having duly come on to be heard before me on January 17, 1972; and the remaining defendants in said action of Fales et al vs. Witkowski et al, and the petitioner, Leon Zawisza, having a appeared by Sidney S. Bobbe, their attorney; and Forman Bullock, Esq., (by Edward Rager, Esq. as Counsel) having appeared on behalf of the plaintiffs in said action brought by Dorothy T. Fales et al, and as attorney for the respondents in said special proceeding brought by Leon Zawisza, and having then and there made an application for an adjournment of the trial; and the Court having denied said application and directed the parties to proceed with their proofs; and said Edward Rager having thereafter refused to proceed, and having withdrawn from further participation in the trial; and the proofs having been then duly submitted on behalf of the said defendants and of said petitioner; and the Court having then and there made its oral decision at the conclusion thereof,

NOW, on motion of Sidney S. Bobbe, attorney for said defendants and said petitioner, it is

ORDERED AND ADJUDGED:

1. That the above entitled action of Fales et al vs. Witkowski et al is hereby declared to have been terminated, having been duly discontinued with prejudice by means of a stipulation dated June 25, 1971, to that effect, duly

executed by the attorneys for the respective parties and filed in the office of the Clerk of this Court;

2. That the temporary injunction order entered in that action on or about November 14, 1967, as resettled by order entered on December 18, 1967, is hereby vacated, and all proceedings taken thereunder are hereby terminated;

3. That the prayer of the petition of Leon Zawisza be and the same hereby is granted, and all proceedings in connection with the affairs and management of The Paderewski Foundation, Inc. taken by the respondents and by Edward Rager subsequent to February 13, 1967, are hereby declared null and void, including more particularly the amended certificate of incorporation filed on May 10, 1967, without the approval of the members, as well as the purported amendment of the bylaws of said corporation allegedly adopted by the respondents on May 23, 1967; and the elections of directors and officers purported to have been held pursuant to said alleged bylaws on June 29, 1967, and any and all elections held subsequently, are hereby set aside as null and void;

4. That a new election of directors, who shall in turn elect officers, is hereby directed to be held pursuant to the bylaws of The Paderewski Foundation, Inc. in effect on March 6, 1967, at which election all persons who were members of said Foundation on that date, as well as any

other persons who may have become members subsequent to that date in good faith, intending to join as members, be entitled to notice thereof and to vote either in person or by proxy for the election of seven (7) directors, to serve as the Board of Directors of said Corporation until the next annual meeting; that nominations for such directorships shall be made in writing addressed to the Corporation at its office, 55 West 42nd Street, New York City 10036, and mailed or delivered by hand on or before March 14, 1972;

5. That said election is directed to take place at a meeting to be held on March 19, 1972, at 2.00 p.m., at the Plaza Hotel, 59th Street and Fifth Avenue, New York City, upon notice of at least fifteen (15) days, by mail; that Leon Zawisza, the said petitioner, shall preside thereat; that said notice shall incorporate a brief summary of the fact that this Court has directed that such meeting be held; and at said meeting a stenographic transcript recording all proceedings shall be kept, constituting the minutes of said meeting, to which shall be appended a copy of the notice of the meeting, the list of members receiving said notice, and an affidavit of mailing of said notice to them; and at said meeting the petitioner, presiding, shall appoint three qualified tellers to record the votes; and subsequent to said meeting the said Corporation, through its attorney, shall report back to this Court as to whether or not the objectives of the meeting have been attained, and whether the said Corporation is prepared to go forward in carrying out its objective;

6. Said notice of meeting may also give notice that there will be presented to the meeting an amended certificate of incorporation to take the place of the amended certificate filed by Edward Rager on May 10, 1967, without the approval of the members;

7. That the respondents to the Zawisza petition and their attorney and counsel are hereby forbidden to interfere in any way with the holding of said meeting or the conduct of the affairs and finances of said Foundation, except by order of this Court on notice; and the respondents and their attorney are hereby directed to turn over to the officers duly elected at said meeting any and all books and papers of the Foundation, as well as any funds of the Foundation in their possession, and they are hereby directed to cease to represent in any way that they are officers of the Corporation or that the office of the Corporation is elsewhere than at 55 West 42nd Street as aforesaid;

8. That this Court retain jurisdiction of this matter, to insure that all directions and objectives here in set forth are carried out, and for the purpose of granting such other or further relief as may be necessary to that end;

9. That the petitioner, Leon Zawisza, recover of the respondents Dorothy T. Fales, George Englert, Isabel Englert, Sigmund Uminski, Mignon Zulinski and Edwina Rager the costs of said special proceeding, in the sum of $470.75, to be taxed by the Clerk of

this Court, and that petitioner have execution therefor.

Filed
February 9, 1972

Enter:
J.J.L.

J.S.C.

Norman Goodman
Clerk

DECISION OF THE COURT:

THE COURT: With respect to the proceeding Dorothy T. Fales, also known as Mrs. Haliburton Fales, and others, against the Paderewski Foundation, there is a stipulation been offered in evidence signed by the attorney who has been active on behalf of the petitioners in that action, one Edward Rager, who, I have been informed, executed that stipulation of discontinuance, signed it at the time that an application for leave to appeal to the Court of Appeals and for a stay was pending. That, in accordance with the Civil Practice Act, is a stipulation signed by the attorney with authority to act for the parties, and it is binding on the parties.

It is binding for the purpose of terminating all proceedings in the action Dorothy T. Fales, and others, against Edward S. Witkowski, and others, and the Paderewski Foundation, Inc. as defendants.

To the extent that any relief is sought in that action, the stipulation of discontinuance terminates that, with prejudice, and from the date of the stipulation the only remaining remedies of any of the parties to that action are to enforce such rights as they have under that stipulation, and no others. Any action is to enforce the rights with respect to the items that are in there, and nothing else.

That stipulation terminates that litigation.

With respect to the proof taken here this morning in the matter of the Paderewski Foundation, Inc. on the petition of Leon Zawisza, suing individually and on behalf of others similarly situated pursuant to Section 25 of the General Corporation Law to set aside a purported election of directors and officers at purported meetings held on June 29, 1967 and on or about June 28, 1968, the petition for relief is granted.

I find that none of the actions taken by or in the name of The Paderewski Foundation subsequent to meetings that were to be held on February 15, 1967, were valid acts which affected the certificate of incorporation or the by-laws of the Paderewski Foundation;

That there have been no legal meetings of The Paderewski Foundation since 1967 and that to the extent that the business and activities of the Foundation are to be carried on, they are to be carried on by those persons now living and now active who were members of the Foundation at March 6, 1967 and any other persons who may have become members subsequent to that date in good faith, who intended to join as members.

The election of officers of the Foundation is essential so that it can be returned to the objectives for which it was formed and to enable those persons interested in those objectives to take control without impediment and to continue the business of the Foundation and the objectives for which it was formed.

It is also important that all persons having dealings with the Foundation may do so with confidence that there is no conflict or acrimony and that the parties who speak for the corporation speak with the authority of the charter, the by-laws and the purposes for which the Foundation was formed.

Toward that end I am directing that a meeting be held, having first determined that the relief prayed for in the petition be granted, that at that meeting all of the members who were entitled to notice of meeting which incorporates a brief summary of the fact that this Court has directed that such a meeting be held;

That the members who were entitled to vote prior to March 6, 1967, and any named bona fide members who in good faith joined subsequent to that date, may also vote.

I would suggest that such meeting be held at a time and place most convenient to the largest possible body of members. I am directing that unless for reasons presented to the Court that another day is suggested, that that meeting be held on March 19th of 1972, a Sunday, at two p.m. and that the order or judgment submitted to the Court provide the place of meeting.

I further suggest at that meeting a stenographic transcript be kept of the proceedings, that the membership list receives notice of the meeting and be appended to the minutes of the meeting; that a count be had of all members

present and that all the proceedings at that meeting be recorded.

At that membership meeting I urge that there be also a new election of officers and directors by the holding of such meetings as the charter and by-laws provide, and that subsequent to the meeting that the corporation through its attorney report back to this Court that the objectives of the meeting have been attained and that the society and Foundation is prepared to go forward with carrying out the objectives for which it was established.

I further direct that should any further order of this Court be required either with respect to the holding of the meeting or any of the other relief that is implicit in and flows fromthe decision of this Court, that such order be presented to me;

And I also direct that any order with respect to the manner of conducting the meeting, whether submitted by the petitioner in this case or any other party, come before the Court and that should any other order be served upon The Paderewski Foundation or any of the parties to this lawsuit, that notice be given to the Court of that fact.

The foregoing constitutes a decision of the Court.

Settle judgment on notice to Mr. Rager and Mr. Bullock at the address that they have given to you here today.

APPENDIX H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Dorothy T. Fales, et al., Plaintiffs,	Trial Term, Part V Index No. 11339-1967
-against-	
Edward S. Witkowski, et al., Defendants.	Present Hon. James J. Leff, Justice.

The following papers numbered 1 to 56 read on this motion this 29th day of February, 1972.

	Papers Numbered
Notice of Motion and Affidavits Annexed, and Exhibits	1 - 34
Answering Affidavits	37
Replying Affidavits and Exhibits	31 - 56
Stenographer's Minutes of Nov. 4, 1971 and Jan. 17, 1972	35 - 36

Upon the foregoing papers this motion is decided in accordance with the accompanying memorandum decision.

Filed March 1, 1972
New York County
Clerk's Office

March 1, 1972

J.J.L.
J.S.C.

SUPREME COURT: NEW YORK COUNTY
I. C. : PART V

Dorothy T. Fales, et al.,
Plaintiffs,

-against-

Index No.
11,339/1967

Edward S. Witkowski, et al.,
Defendants,

Phyllis Bohleber, et al.,
Defendants.

LEFF, J.:

This motion for an order vacating the judgment finally terminating these proceedings is denied. These interminable proceedings were finally terminated and an election is to be held on March 19, 1972 as provided by the judgment of this court. There is no warrant after five years of litigation for granting any relief to the petitioner. These proceedings were set down for trial on January 17, 1972, after an extended conference on November 4, 1971. At that conference (the minutes of which are part of this application) the following transpired (Mr. Rager, pp.35-36):

> "I am praying right now that you take it all so it is not splintered the way Judge Murtagh said in one of his opinions, and it is concluded. I have been praying for it and I am praying for it now."

Further, Mr. Rager (p.43):

> "No, your Honor, it cannot (be settled) this has to be tried because of what Mr. Bobbe says."

Page 52:

> "THE COURT: How much time? Assuming that we took all the things and lumped them together and tried it, how much time do I have to give you?
>
> MR. RAGER: I would need at least two days, your Honor. ***" (Emphasis supplied.)

Page 54:

> "THE COURT: January 17th. How does that sound?
>
> MR. BOBBE: Your Honor, it's rather late.
>
> MR. RAGER: That would be wonderful, your Honor. It would give us a chance.
>
> MR. BOBBE: What can we try? Here, this case, the Fales case, has been settled, has been discontinued with prejudice." (Emphasis supplied.)

Further:

> "THE COURT: I will tell you what, if there is anything you want to do with respect to a motion, I think I have got some motion papers here, they will all be returnable that morning. I will either dispose of them by ruling on the motion or trying the cases.
>
> MR. RAGER: Thank you, your Honor.
>
> THE COURT: Issue subpoenas, whatever else you want. If there is no other way to resolve it, I will give you a trial on whatever the issues are."

Further (p.58):

> "THE COURT: I will see you on January 17th."

Further (p.59):

> "MR. BOBBE: That is January the 17th?
>
> THE COURT: January 17th.
>
> MR. RAGER: Thank you very much, your Honor.
>
> MR. BULLOCK: That will be in this room?
>
> THE COURT: In here. You want

subpoenas ordered and records produced, you can do it for that date.

MR. BULLOCK: All right. Thank you. (Matter continued to January 17, 1972.)

At no time was any mention made of a substitution for Mr. Rager or Mr. Forman Bullock nor was any suggestion made on November 4 that the trial of all issues would not be had on January 17.

The proceedings had on January 17 after the November 4 proceedings amply justify the relief afforded in the judgment and there is no warrant for vacating that judgment or for staying any further proceedings. Application is denied.

Dated: March 1, 1972 J.S.C.

Filed March 1, 1972
New York County Clerk's Office

NEW YORK SUPREME COURT, COUNTY OF NEW YORK, TRIAL TERM PART V

PRESENT
Hon. Edward J. Greenfield, Justice

Index No.
11339/67

Fales *
v.
Witkowski *

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*handwritten

	Papers Numbered
Notice of Motion and Affidavits Annexed	1 - 10
Answering Affidavits	11
Replying Affidavits and Exhibit	12 - 15

Upon the foregoing papers this motion for an order vacating the judgment of this court entered February 9, 1972 is denied. It appears that said judgment was based upon a default by movants at the trial. It further appears that an appeal from that judgment was dismissed on April 13, 1972 as being non-appealable. It also appears that on February 19, 1972, movants served a motion in this court to vacate their default. That application was denied, and movants have appealed from said denial. This court has no jurisdiction over the instant application because an appeal from a prior denial of the same relief is

currently pending in the Appellate Division.

Dated: August 2, 1972 J.S.C.

Filed August 4, 1972
New York County Clerk's Office

APPENDIX I

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 11th day of July, 1968.

Present

Hon. Bernard Botein, Presiding Justice,
Samuel W. Eager,
Louis J. Capozzoli,
Owen McGivern,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Respondents,

-against- 13382N

Edward S. Witkowski, et al.,

Defendants-Appellants.

An appeal having been taken to this Court by the defendants-appellants from an order of the Supreme Court, New York County, entered on November 15, 1967, enjoining defendant Henry C. Malon from representing himself and acting as counsel for the Paderewski Foundation, Inc. and enjoining the defendants-appellants from representing themselves as directors and officers of the Paderewski Foundation, Inc., and said appeal having been argued by Mr. Sidney

S. Bobbe, of counsel for the appellants, and by Mr. George Trosk, of counsel for the respondents; and due deliberation having been had thereon,

It is hereby unanimously ordered that the order so appealed from be and the same is hereby affirmed with $30 costs and disbursements to the respondents.

ENTER:

Hyman W. Gamso
Clerk.

At a Special Term, Part I of the Supreme Court, held in and for the County of New York at the Court House...

Present:
Hon. Charles A. Loreto, Justice.

Fales, et al., v. Witkowski, et al.

The plaintiffs having moved this Court, by Notice of Motion dated July 7, 1967, for an order striking the appearance of defendant Malon as attorney for the Paderewski Foundation, Inc., restraining the defendants from representing themselves, as the officers, directors, attorneys and employees of the Paderewski Foundation, Inc. and other relief as set forth therein, and said motion having duly come on to be heard before me on July 31, 1967; and on hearing EDWARD RAGER, of counsel for the plaintiffs, in support of said motion, and HENRY C. MALON, SIDNEY S. BOBBE and MICHAEL PIZNAK, attorneys for the defendants, in opposition thereto; and on reading and filing the summons and complaint dated June 5, 1967; the Notice of Motion dated July 7, 1967; the affidavits of Forman Bullock and Sigmund H. Uminski, both sworn to the 29th day of July, 1967, and exhibits annexed in support of said motion; and upon the affidavit of Walter J. Bayer, sworn to the 24th day of June, 1967; the affidavit of Walter J. Bayer, sworn to the 18th day of July, 1967; the affirmation of Sidney S. Bobbe dated July 19, 1967; the affirmations of Henry C. Malon dated July 21st and August 31, 1967 in opposition thereto; and upon due delib-

At a Special Term, Part I of the Supreme Court, held in and for the County of New York at the Court House...

Present:
Hon. Charles A. Loreto, Justice.

Fales, et al., v. Witkowski, et al.

The plaintiffs having moved this Court, by Notice of Motion dated July 7, 1967, for an order striking the appearance of defendant Malon as attorney for the Paderewski Foundation, Inc., restraining the defendants from representing themselves, as the officers, directors, attorneys and employees of the Paderewski Foundation, Inc. and other relief as set forth therein, and said motion having duly come on to be heard before me on July 31, 1967; and on hearing EDWARD RAGER, of counsel for the plaintiffs, in support of said motion, and HENRY C. MALON, SIDNEY S. BOBBE and MICHAEL PIZNAK, attorneys for the defendants, in opposition thereto; and on reading and filing the summons and complaint dated June 5, 1967; the Notice of Motion dated July 7, 1967; the affidavits of Forman Bullock and Sigmund H. Uminski, both sworn to the 29th day of July, 1967, and exhibits annexed in support of said motion; and upon the affidavit of Walter J. Bayer, sworn to the 24th day of June, 1967; the affidavit of Walter J. Bayer, sworn to the 18th day of July, 1967; the affirmation of Sidney S. Bobbe dated July 19, 1967; the affirmations of Henry C. Malon dated July 21st and August 31, 1967 in opposition thereto; and upon due delib-

eration having been had, and the Court having made its decision in writing; and the court having dismissed the aforesaid complaint with leave to replead.

NOW, upon motion of FORMAN BULLOCK, attorney for plaintiffs, and pending further order of this Court, it is

ORDERED, that the plaintiffs' motion is granted to the extent of submitting the issue of the validity of the meeting of June 5, 1967 and the appointment of the defendant Henry C. Malon as counsel for the Paderewski Foundation, Inc. and the election of the directors and officers at said meeting to the Honorable Seymour Bieber, an Official Referee, to hear and report to me his findings thereon; and it is further

ORDERED, that, pending a hearing and report of the validity of the appointment of defendant Henry C. Malon and the election of directors at the meeting of June 5, 1967, the defendant Henry C. Malon hereby be and is enjoined from representing himself and acting as counsel for the Paderewski Foundation, Inc., and it is further

ORDERED, that, pending such hearing and report and application to confirm, the defendants Edward S. Witkowski, Jeanette Witkowska, George J. Suski, Henry C. Malon, Phyllis Bohleber, also known as Mrs. William Bohleber, Aleksandra Wos, Wladyslaw Furka, Leon Nadrowski, Mrs. Thaddeus De Lazarewicz Lazarr and Anna Zakrzewska be and hereby are enjoined from representing themselves as directors and

officers of the Paderewski Foundation, Inc. and from receiving compensation from the Foundation therefor, and it is further

ORDERED, that the motion of the plaintiffs be in all other respects denied; and it is further

ORDERED, that plaintiffs file an undertaking in the sum of $250.00 pursuant to C.P.L.R. 6312 (b).

ENTER:

C.A.L.
J.S.C.

Filed November 16, 1967
County Clerk's Office
New York

RECORD ON APPEAL FROM STATE SUPREME COURT TO APPELLATE DIVISION - ORDER OF LORETO, J.

FALES v. WITKOWSKI--This suit has been instituted by a number of persons individually and as members and directors or officers of The Paderewski Foundation, Inc., against the named individual defendants and the said Foundation.

The complaint sets forth 176 paragraphs of recitals and requests multiple relief, principally on accounting of monies, property and profits wasted or wrongfully obtained and an injunction against the individuals from holding themselves out to be officers, directors or employees of the Foundation, and further, that the defendant Malon desist from representing himself to be attorney and counsel for the Foundation.

The defendant Bayer (motion number 143) and the defendant Bohleber (motion number 142) separately and the remaining defendants united (motion number 144) move to dismiss the complaint for failure to state a cause of action and also because it intermingles charges without separating them and fails to set forth any plain and concise cause of action.

Plaintiffs separately move (motion number 145) for an order striking the appearance of defendant Malon as attorney for the Foundation, restraining defendants from representing themselves as its officers and directors and misappropriating its property.

Numerous and voluminous affidavits and exhibits have been submitted in connection with these motions.

At the outset, it must be observed that the pleading is a showpiece of conglomerate recitals of details of recriminations that have no place in a complaint and instead of aiding in the spelling out of a valid cause of action, suffocate and obliterate the possibility of accomplishing this. Many assertions of a historical nature serve to create the same malfunction. There is a total falure to make a plain and concise statement of a cause of action against the defendants and also a complete failure to state separately claims intended to be asserted individually and on behalf of the Foundation (nominally named as defendant).

What may be discerned in this mass of papers is that the Foundation was established about eighteen years ago as a membership corporation for laudable purposes, using the celebrated name and high ideals of Ignace Jan Paderewski. It is charged that the defendant Witkowski has been individually in absolute control of the organization over the years, misusing it and its assets in many ways.

Further, it is shown that at the instance of defendant Witkowski, in or about January, 1967, Edward Rager was engaged by the Foundation as its executive director and counsel to prepare an amended certificate of incorporation and new by-laws to be adopted as soon as possible, an

appropriate pamphlet for a membership and building fund drive and that a new board of directors of persons of impeccable integrity and sympathetic to the Paderewski ideals were to be selected. Then it is charged that Witkowski, being aged and possibly senile was induced by misrepresentation and coercion to change his mind about Edward Rager and this resulted in a call of a special membership meeting for June 5, 1967, in violation of statute and the Foundation's by-laws, whereat persons not members attended and voted and purportedly new officers and directors were chosen and defendant Malon was appointed its counsel.

Really, what the court can fathom in this welter of papers and charges, is not a grievance to be pressed against Witkowski (who had been and was suffered to be the dominant figure in the organization for so many years) and others for wrongdoing over the years preceding the appointment of Edward Rager as executive director and counsel, nor an undoing of all that had been done up to that time by the Foundation or in its name. Nor is it shown that plaintiffs were members during any of those preceding years when any wrongdoing is charged or were directors then and, if directors, what action they undertook in the matter.

But what the court believes is spelled out and still enmeshed in much irrelevancy and surplusage of recitals is a battle for control of the organization and its legal representation, arising during these recent months of this year. The complaint should succinctly state such a cause, if that is intended.

The papers do indicate a reasonable basis for contesting the right of defendant Malon to represent the Foundation and the propriety of the election of directors at the meeting of June 5, 1967. In the interest of justice, pending a hearing and determination of the validity of his appointment and of the election of directors at said meeting, they will be restrained from acting in such capacities.

Although the complaint contains many aspersions and recriminations between the plaintiffs, Edward Rager and the defendant Bayer, it fails to recite any wrongdoing on this defendant's part against the Foundation that can be the proper subject of a cognizable cause of action. Moreover, it is clearly and definitely asserted that he severed his connection as member and director of the Foundation on April 7, 1967, and has had nothing to do with it since that date. The complaint is therefore dismissed as to said defendant.

As to the other defendants the complaint is dismissed with leave to replead as herein indicated.

Plaintiffs' motion is granted only to the extent of submitting the issue of the validity of the meeting of June 5, 1967, and the appointment of Malon as counsel for the Foundation and the election of directors, to Hon. Seymour Bieber, an official referee, to hear and report thereon, meanwhile restraining them from acting in such capacities or representing themselves to be such and from receiving compensation from the

Foundation therefor.

The court at this point states "Settle order." However, it would redound to the credit of all involved in this litigation and do honor to the name of Paderewski, as well as all the great and wonderful Polish people and those of Polish ancestry, if they would settle their differences outside of court, rather than engage in a protracted, bitter and acrimonious litigation and possibly use the mediation of one of the contemporary, outstanding Americans of Polish descent, whose impartial decision on all issues in dispute would be graciously taken as final.

(New York Law Journal, August 21, 1967, p. 12)

COURT STENOGRAPHER'S MINUTES ON REARGUMENT OF MOTIONS - RECORD ON APPEAL FROM STATE SUPREME COURT TO APPELLATE DIVISION OF JULY 31, 1967

MR. BOBBE: ***This is not the first time that Mr. Rager has framed a complaint like this. I have referred in my memorandum to other litigation in which he has been involved where his complaints have been thrown out for the same reason, and no permission granted --

THE COURT: This is all collateral and will not be at all considered. I will read this complaint, and this complaint alone, to determine its validity.

MR. BOBBE: Except, your Honor, that the question of leave to amend has come up in other litigation where he has been guilty of the same thing, and the Appellate Courts have held that in view of the nature of the complaints that have been framed by him and served by him, they will not permit amendment.

THE COURT: That may be well within the prerogative of the Appellate Court.

MR. BOBBE: That lays down a guide line that should be applied in this case as a matter of precedent. That is the only reason I refer to it.

THE COURT: The appellate court may have had him before it before and knows of his repu-

tation, whereas this Court has not had him on prior occasions. Very well, I will take your submission.

APPENDIX J

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 1st day of July, 1969.

Present

Hon. Louis J. Capozzoli, Justice Presiding,
George Tilzer,
Arthur Markewich,
Emilio Nunez,
James B. M. McNally, Justices.

In the Matter of The Paderewski Foundation, Inc. on the Petition of Leon Zawisza,
Petitioner-Respondent,
suing individually and on behalf of others similarly situated, pursuant to Section 25 of the General Corporation Law, to set aside a purported election of Directors and Officers at purported meetings held on June 29, 1967 and on or about June 28, 1968.

772

Filed
July 1, 1969

-against-

The Paderewski Foundation, Inc., Dorothy T. Fales, et al.,
Respondents-Appellants.

An appeal having been taken to this Court by the respondents-appellants from an order of the

Supreme Court, New York County, entered on February 18, 1969, denying a motion of respondents to dismiss the proceeding and referring the issues thereunder to a Referee and dismissing the counterclaim against the petitioner, and said appeal having been argued by Mr. George Trosk, of counsel for appellants, and by Mr. Sidney Bobbe, of counsel for the respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed, without costs and without disbursements.

ENTER:

Hyman W. Gamso
Clerk.

At a Special Term, Part I
of the Supreme Court of
the State of New York, held
in and for the County of
New York on the 17th day
of February, 1969.

Present
Hon. Irving H. Saypol, Justice.

In the Matter of the Paderewski
Foundation, Inc.
On the Petition of Leon Zawisza

The above matter having been brought on before me by order to show cause entered in the office of the Clerk of this Court on the 27th day of September, 1968, and upon said order to show cause; the petition of LEON ZAWISZA verified September 27, 1968, with the Exhibits A to E inclusive annexed thereto and filed with said order to show cause; and on reading and filing the reply affidavit of LEON ZAWISZA verified November 11, 1968, and the affirmation of SIDNEY S. BOBBE dated November 12, 1968, both in support of the application for the relief prayed for in the petition; and upon reading and filing the answer of the respondents verified November 5, 1968, with the exhibits annexed thereto; the answering affidavit of DOROTHY T. FALES verified November 5, 1968, with the exhibit annexed thereto; the answering affidavit of HALIBURTON FALES verified November 5, 1968, with the exhibit annexed thereto; the answering affidavits of ISABEL C. ENGLERT verified November 5, 1968, with the exhibit annexed thereto; the affidavit of WILLIAM

D'EFENBACH verified November 1, 1968; the affidavit of GEORGE R. ENGLERT verified November 5, 1968, with the exhibit annexed thereto; the affidavit of MIGNON ZULINSKI verified November 5, 1968; the affirmation of FORMAN BULLOCK dated November 6, 1968; the affidavit of EDWINA RAGER verified November 23, 1968, with the exhibit annexed thereto; the notice dated November 19, 1968, with the exhibit annexed thereto; and the reply affidavit of ISABEL C. ENGLERT verified November 19, 1968, all in opposition to said motion; and on hearing SIDNEY S. BOBBE, of counsel for the petitioner, in support of said motion, and GEORGE TROSK, of counsel for the respondents, in opposition thereto; and due deliberation having been had, and the Court having filed its decision in writing,

NOW, on motion of SIDNEY S. BOBBE, of counsel for petitioner, it is

ORDERED that said motion be and the same hereby is granted to the extent of referring to Hon. SEYMOUR BIEBER, Special Referee, to hear and report, together with his recommendations, the various factual issues raised by the papers submitted upon this application, including, among other things, the standing of petitioner to maintain this proceeding, the good faith and status of the petitioner as an aggrieved party; and the validity of the elections; and it is

FURTHER ORDERED that the counterclaim contained in the answer herein be and the same hereby is stricken, with leave to the respondents to proceed in a plenary action if so desired.

ENTER:

J.S.C.

Entered February 18, 1969
New York County Clerk's Office

Zawisza - Opinion of Saypol, J.

IN RE PADEREWSKI FOUNDATION, INC. - Proceeding, pursuant to section 25 of the General Corporation Law, to set aside a corporate election of directors and officers and to direct a new election is granted to the extent of referring to Hon. Seymour Bieber, special referee, to hear and report, together with his recommendations, the various factual issues raised by the voluminous papers submitted upon this application, including, inter alia, the standing of petitioner to maintain this proceeding, the good faith and status of the petitioner as an aggrieved party, and the validity of the elections. The sharply conflicting versions evidenced in the extensive affidavits and exhibits render it impractical for the court to make a summary resolution without affording all parties fair opportunity to establish their claims. It is to be noted that in the companion action, Dorothy T. Fales et al. v. Edward S. Witkowski et al. (County Clerk's Index No. 11339-67), each of the two contending groups who are here, insist that the evictions and activities of the other are illegal. Yet here the Foundation seeks a new election.

Although petitioner's request, in reply, for an order dismissing the counterclaim is not formally interposed, the court deems it appropriate to strike this counterclaim forthwith. Section 25 of the General Corporation Law requires expeditious judicial consideration in regard to contested corporate elections. Such proceedings should not be delayed or encumbered by unrelated counter-

claims nots connected with the elections in dispute. The counterclaim seeking injunctive relief and accounting against petitioner for acts not connected with the presently disputed elections is improperly joined and is stricken, with leave to proceed in a plenary action. Settle order.

Supreme Court, State of New York
Special Term, Part I, New York County

Present
Hon. Irving H. Saypol, Justice.

Motion by respondents for an order striking certain paragraphs from this petition, presented pursuant to Section 25 of the General Corporation Law, as irrelevant and/or scandalous, is granted to the extent of striking out paragraphs 15, 16, and 28 through 42; otherwise denied. The paragraphs stricken do not fall within the purview of Section 25 of the General Corporation Law and its objectives and are entirely unnecessary to a resolution of the prime and proper issues involved concerning the validity of subject contested elections. However, the other protested paragraphs, now permitted to stand, have a sufficient relevance to the proceeding either by way of background, explanation or detail concerning the main questions involved.

Dated: January 31, 1970

ENTER: February 4, 1970
11339/1967

Appellate Division of the
Supreme Court, First Judicial
Department, the 22nd day of
April, 1969.

Present
Hon. Samuel W. Eager Presiding Justice,
Louis J. Capozzoli,
Arthur Markewich,
Emilio Nunez,
Earle C. Bastow, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants-
Respondents,
-against-
Edward S. Witkowski, et al.,
Defendants-Respondents-
Appellants.

M-670

In the Matter of the Paderewski
Foundation, Inc.
on the Petition of Leon Zawisza,
etc.

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(1) The above named respondents-appellants-respondents having moved this Court for an order dismissing the appeal taken by petitioner-respondent-appellant from an order of the Supreme Court, New York County, entered on February 4, 1969, granting respondents-appellants-respondents' motion to strike Paragraphs 15, 16 and 28 through 42 of the Petition;

(2) The above named plaintiffs-appellants-respondents and respondents-appellants-respondents having moved this Court for an order punishing

Sidney S. Bobbe, Esq., attorney for petitioner-respondent-appellant Leon Zawisza and defendants-respondents-appellants Edward S. Witkowski, (et al.), for contempt of Court for wilful disobedience of the stay contained in the order to show cause dated March 21, 1969;

Now, upon reading and filing the order to show cause, dated April 10, 1969, with proof of due service thereof, and the statements of Forman Bullock and George Trosk in support of said motion, and the statement of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Forman Bullock and Mr. George Trosk for the motion, and Mr. Sidney S. Bobbe opposed,

It is hereby unanimously ordered that the branch of the motion to dismiss the appeal taken by petitioner-respondent-appellant from the aforesaid order of the Supreme Court, New York County, entered on February 4, 1969, be and the same hereby is granted, such order not being appealable as of right. In all other respects the motion is denied.

ENTER:

Frank H. (illegible)
Deputy Clerk.

State of New York, in Court of Appeals
At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Thirteenth day of October 1969.

Present, Hon. Stanley H. Fuld, Chief Judge, presiding.

Motion No. 1074
In the Matter of The Paderewski Foundation, Inc., on the petition of Leon Zawisza,
Respondent,
suing individually & c.,
The Paderewski Foundation, Inc., & ors.,
Appellants.

Dorothy T. Fales & c. & ors.,
Appellants-Respondents,

vs.

Edward S. Witkowski & ors.,
Respondents-Appellants,

and

The Paderewski Foundation, Inc.,
Defendant.

Motions for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellants The Paderewski Foundation, Inc. & ors. and Dorothy T. Fales & ors. and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motions be and the same hereby are denied with ten dollars costs and necessary printing disbursements.

A copy

Kimball
Deputy Clerk

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM PART I, NEW YORK COUNTY
at the Courthouse thereof, 60 Centre Street,
New York, New York, 10007

November 27, 1968

Present
Hon. Irving H. Saypol, Justice.

Dorothy T. Fales, et al.,

-against-

Edward S. Witkowski, et al.

The following papers numbered 1 to 11
read on this motion, Argued
No. 168 on Calendar of November 26, 1968

	Papers Numbered
Filed - Order to Show Cause-Exhibits and Affidavits Annexed	1 - 2
Answering Affidavits Cross Motion	4 - 6
Replying Affidavits and Exhibits	7 - 11
Affidavits of Service	3

See papers on motions #169/70/71/76/77 of this date.

Upon the foregoing papers this motion by plaintiffs for an order adjudging named defendants guilty of contempt for alleged violation of a prior injunctive order of this court is granted to the extent only of referring to Seymour Bieber, Special Referee, to hear and report, together with

his recommendations, the factual issues raised with respect to whether any of the named defendants wilfully violated any of the injunctive provisions of the previous order of Mr. Justice Loreto. Pending the submission of the referee's report, final determination of this application will be held in abeyance. The Office of the Referees, Room 308M, will arrange a hearing date on request of counsel.

Cross motion by defendants for an order dissolving the temporary injunction granted by Mr. Justice Loreto is denied. In light of the hiatus occasioned by defendants' appeal from the order of Mr. Justice Loreto, unanimously affirmed; the attempts to settle the litigation; and the extensive labor in the prosecution of the action, it does not appear that plaintiffs have been dilatory or have unduly delayed in complying with the terms of the prior order with respect to a reference on preliminary fact questions. However, in view of the various determinations now made by this Court, in this and companion motions respecting the litigation, plaintiffs should now proceed with dispatch.

Dated: January 31, 1969 J.S.C.

Briefs: Plaintiff's xxx Defendant's x

County Clerk's No. 11339, 1967

Filed February 4, 1969
County Clerk's Office
New York

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 1st day of July, 1969.

Present
Hon. Louis J. Capozzoli, Justice Presiding,
George Tilzer,
Arthur Markewich,
Emilio Nunez,
James B. M. McNally, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Appellants-Respondents,

-against- 768

Edward Witkowski, et al.,

Defendants-Respondents-Appellants,

-and-

The Paderewski Foundation, Inc.,

Defendant.

Cross-appeals having been taken to this Court by the plaintiffs-appellants-respondents and the defendants-respondents-appellants from

an order of the Supreme Court, New York County, entered on February 4, 1969, as indicated in the notice of appeal and notice of cross-appeal, and said cross-appeals having been argued by Mr. George Trosk, of counsel for plaintiffs-appellants-respondents, and by Mr. Sidney Bobbe of counsel for the defendants-respondents-appellants; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed, without costs and without disbursements.

ENTER:

Hyman W. Gamso
Clerk.

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM PART I, NEW YORK COUNTY
at the Courthouse thereof, 60 Centre Street,
New York, New York, 10007

Present
Hon. Irving H. Saypol, Justice.

Dorothy T. Fales, et al.,

-against-

Edward S. Witkowski, et al.

The following papers numbered 1 to 6
read on this motion, submitted by Court
No. 170 on Calendar of November 26, 1968

	Papers Numbered
Filed papers #1 to 3 motion #48 of November 1, 1968	
Notice of Motion and Affidavits Annexed	1 - 2
Answering Affidavit	4
Replying Affidavit and demand	5 - 6
Stipulation	3

See papers on Motions #168/9/70/71/76/77 of this date.

Motion by plaintiffs for an order vacating or modifying defendants' demand for a bill of particulars or to extend their time to comply until the completion of examinations before trial of defendants is granted to the extent only of permitting items 2 and 5 to be withdrawn and of

striking out item 12; otherwise denied. If plaintiffs have no present knowledge of any demanded item, they should state so clearly under oath, and, in that event, a further bill of particulars will be furnished upon conclusion of the pretrial depositions. A bill in compliance with the demand, as modified, will be served accordingly within 15 days after service of a copy of this order with notice of entry.

Dated: January 31, 1969 J.S.C.

County Clerk's No. 11339, 1967

Filed February 4, 1969
County Clerk's Office
New York

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 1st day of July, 1969.

Present

Hon. Louis J. Capozzoli, Justice Presiding,
George Tilzer,
Arthur Markewich,
Emilio Nunez,
James B. M. McNally, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Appellants,

-against- 771

Edward S. Witkowski, et al.,

Defendants-Respondents,

-and-

The Paderewski Foundation, Inc.,

Defendant.

An appeal having been taken to this Court by the plaintiffs-appellants from an order of the Supreme Court, New York County, entered on February 4, 1969, denying plaintiffs' motion to

vacate a demand for a bill of particulars, and said appeal having been argued by Mr. George Trosk of counsel for the appellants, and by Mr. Sidney Bobbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed, without costs and without disbursements.

ENTER:

Hyman W. Gamso
Clerk.

APPENDIX K

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Present: Hon. Alfred M. Ascione, Justice.

Dorothy T. Fales, et al.,
-against-
Edward S. Witkowski, et al.

The following papers numbered 1 to .... read on this motion, submitted by Court No. 140 on Calendar of September 23, 1969

	Papers Numbered
Notice of Motion and Affidavits Annexed	1 - 2
Supplemental Affidavit	3
Cross Motion, Affidavits, pleadings & Exhibits	4 - 16
.....Affidavit	17

Upon the foregoing papers this motion by defendants to preclude is denied since it appears that plaintiffs have already served a bill of particulars sufficiently responsive to the demand. The function of a bill is to narrow the issues and not to gather evidence.

Cross-motion to strike the answer of certain named defendants for failure to appear for oral examination pursuant to order entered February 4, 1969 (SAYPOL, J.), is granted unless they shall submit to oral examination at Special Term, Part II, of this Court, on October 1, 1969, at 10:00 A.M. The examinations shall continue from day to day until concluded. That branch of the cross-

motion seeking to punish defendants' attorney for contempt, and for incidental relief, is in all respects denied. Upon the unduly prolix and irrelevant affidavits submitted, the court is unable to discern a clear basis for the relief sought.

Dated: September 25, 1969

AMS
J.S.C.

County Clerk's No. 11339, 1967
Spec I Liber 468 Line 10, 1969

At a term of the Appellate Division
of the Supreme Court held in and
for the First Judicial Department
in the County of New York, on the
18th day of December 1969.

Present--Hon. Harold A. Stevens,
Presiding Justice.
George Tilzer,
Owen McGivern,
Arthur Markewich,
Emilio Nunez, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Respondents-Appellants,
-against- M-2149
Edward S. Witkowski, et al.,
Defendants-Appellants-Respondents.

Order Denying Motion
to Dismiss Appeal

Cross-appelas having been taken to this Court by the defendants-appellants-respondents and the plaintiffs-respondents-appellants from the orders of the Supreme Court, New York County, duly entered on September 26, 1969 and November 7, 1969, respectively,

And plaintiffs-respondents-appellants having moved to dismiss said appeal of defendants-appellants-respondents, for an enlargement of plaintiffs-respondents-appellants- time to perfect their cross-appeal, and for other relief,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statements of Forman Bullock in support of said motion, and the statement of Sidney Bobbe in opposition thereto, and after hearing Mr. Forman Bullock for the motion, and Mr. Sidney Bobbe opposed,

It is hereby unanimously ordered that the motion to dismiss said appeal be and the same is denied in all respects with $10 costs.

ENTER:

Hyman W. Gamso,
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 18th day of December, 1969.

Present
Hon. Harold A. Stevens, Presiding Justice,
George Tilzer,
Owen McGivern,
Arthur Markewich,
Emilio Nunez, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Respondents,

-against- 1375N

Edward S. Witkowski, et al.,
Defendants-Appellants,

-and-

Aleksandra Wos, Leon Nadrowski
and The Paderewski Foundation, Inc.,
Defendants.

Appeals having been taken to this Court by defendants-appellants from so much of an order of the Supreme Court, New York County, entered on September 26, 1969, as denied defendants' motion to preclude the plaintiffs for failure to

serve the bill of particulars ordered to be served and granted the cross-motion of plaintiffs to strike the answer of certain named defendants unless they submitted to oral examination on October 1, 1969; and from so much of an order of said court entered on November 7, 1969, as denies defendants' motion for an order of preclusion and grants the cross-motion of plaintiffs to the extent of directing said defendants to appear at Special Term, Part II of said court for examination before trial on specified dates,

And said appeals having been argued by Mr. Sidney S. Bobbe of counsel for the appellants, and no one appearing on behalf of respondents, and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the order entered on November 7, 1969, which on reargument supplanted the order entered on September 26, 1969, be and the same hereby is modified on the law and the facts and in the exercise of discretion, with $30 costs and disbursements to defendants-appellants, so as to grant defendants-appellants' motion to preclude plaintiffs-respondents unless plaintiffs-respondents shall serve a bill of particulars in accordance with the demand within 20 days after service of a copy of this order, and shall pay to defendants-appellants $100 costs of the motion in addition to the aforesaid costs and disbursements of this appeal; and

It is further unanimously ordered that the

order of November 7, 1969, is further modified on the law and the facts and in the exercise of discretion to strike therefrom the dates therein set forth for examination of certain named defendants and to provide instead that such examinations shall take place commencing within 20 days after service of the bill of particulars on a date to be agreed upon between the parties or, failing such agreement, on a date within such period to be fixed by the justice presiding at Special Term, Part II, in the same sequence as to defendants as provided in the order entered on November 7, 1969, and shall continue from day to day until completed, unless adjourned by agreement between counsel. As so modified, said order is otherwise affirmed, with costs and disbursements as above provided. Upon failure of plaintiffs to serve the bill of particulars and to comply with the other conditions as to costs, an order may be entered ex parte unconditionally precluding plaintiffs.

ENTER:

Hyman W. Gamso
Clerk.

Cross relief asked by Fales Plaintiffs on October 4, 1969 in Opposition to Motion to Preclude

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Dorothy T. Fales, et al.,
Plaintiffs,
-against-
Edward S. Witkowski, et al.,
Defendants.

***

a) Reargument as to Justice Ascione's order, dated September 25, 1969 is requested and that it be recalled and vacated.

b) That the instant motion of defendants by order to show cause and their motion of September 5, 1969 and plaintiffs' cross motion submitted on September 23, 1969 and this cross motion be referred to Mr. Justice Loreto for the following relief:

1) Punishing Sidney S. Bobbe for contempt of Court by disregarding the stay granted by Mr. Justice Loreto on September 5, 1969 and other contemptuous conduct.

2) Punishing the defendants for violation of the order of Mr. Justice Loreto of November 14, 1967.

3) Modifying that order of Mr. Justice Loreto of November 14, 1967 by deleting from it the provision for a reference.

4) Granting plaintiffs pending motion before Justice Loreto for a permanent injunction.

5) Precluding defendants from offering any evidence as to items contained in plaintiffs' demand of December 26, 1967 and directing a further bill.

6) Striking defendants' answer or in the alternative imposing appropriate sanctions and setting the examinations of each defendant on separate days with three days interval.

7) Staying all proceedings on the part of defendants until the completion of their examinations.

8) Denying defendants' motions and such other and further relief as the Court may deem just together with costs.

Dated: October 4, 1969

Forman Bullock
Attorney for
Plaintiffs

To: Sidney S. Bobbe, Esq.
Attorney for Defendants

SUPREME COURT : NEW YORK

NATHANIEL T. HELMAN,
Justice.

Fales, et al,
v.
Witkowski, et al,

The following papers numbered 1 to 7 read on this motion Submitted.

In motion #2 of June 17, 1969, defendant seeks to vacate a preliminary injunction and by motion #3 of the same date defendant moves to preclude plaintiffs for failure to serve a bill of particulars. By order of March 31, 1969, the Appellate Division of this Court stayed all further proceedings in this action. Accordingly, the motions are denied with leave to renew the applications when the aforesaid stay has been vacated.

Entered June 21, 1969

NTH
J. S. C.

At the term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 27th day of January, 1970,

Present-Hon. Harold A. Stevens,
Presiding Justice.
Owen McGivern
Arthur Markewich,
Emilio Nunez,
George Tilzer, Justices.

Dorothy T. Fales, et al,
Plaintiffs-Respondents-Appellants,
-against-
Edward S. Witkowski, et al,
Defendants-Appellants-Respondents.

M-2390

Cross-appeals having been taken to this Court by the defendants-appellants-respondents and the plaintiffs-respondents-appellants from the orders of the Supreme Court, New York County, entered on September 26, 1969 and November 7, 1969, respectively, and the plaintiffs-respondents-appellants having moved for an order vacating default, granting leave to reargue their cross-appeals from the aforesaid orders of Supreme Court, New York County, which were modified by order of this Court entered on December 18, 1969; for leave to reargue Motion No. 2149 of December 2, 1969, which motion was denied by order of this Court entered on December 18, 1969, for leave to appeal to the Court of Appeals from said orders of this Court,

for leave to vacate or resettle said orders of this Court, and for other relief,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statements of Forman Bullock in support of said motion, and the statement of Sidney S. Bobbe in opposition thereto, and after hearing Mr. Forman Bullock for the motion, and Mr. Sidney S. Bobbe opposed,

It is ordered that said motion be and the same hereby is in all respects denied with $20 costs.

ENTER:

Hyman W. Gamso
Clerk.

APPENDIX L

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM PART I, NEW YORK COUNTY

Present
Hon. Arnold L. Fein, Justice.

Dorothy T. Fales, et al.,

-against-

Edward S. Witkowski, et al.

The following papers numbered 1 to 36 read on this motion, Submitted.
No. 71 on Calendar of November 28, 1969.

	Papers Numbered
Notice of Motion-Exhibit-and Affidavit Annexed	1 - 3
Answering Affidavits Cross Motion Exhibits	4 - 33
Replying Affidavits	34 - 34A
Rejoinder Affidavit and Exhibits	35 - 36
See papers on Motions #162 and #68	

Upon the foregoing papers this motion is disposed of in accordance with memorandum opinion filed simultaneously herewith.

Filed: February 2, 1970
New York County Clerk's Office

Dated: January 28, 1970
County Clerk's No. 11,339, 1967

s/A.L.F.
J.S.C.

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM : PART I

Dorothy T. Fales, et al.,

-against-

Edward S. Witkowski, et al.

ARNOLD L. FEIN, J.:

Motions under calendar numbers 71 of November 28, 1969, and 162 of December 3, 1969, are consolidated and disposed of herewith.

Defendants, with the exception of Wos and Nadrowski, move for an order to dissolve a temporary injunction (by order dated December 18, 1967), granted to the plaintiffs. The memorandum decision of this court dated August 17, 1967, provided, inter alia, that pending a hearing and determination of the validity of the appointment of defendant Malon as counsel for the Paderewski Foundation and the validity of the election of officers and directors of said Foundation at the meeting of June 5, 1967, defendants were restrained from acting in such capacities. The above issues were referred to Hon. Seymour Bieber, Special Referee, to hear and report thereon.

Plaintiffs cross-move for an order (1) for leave to serve an amended and supplemental complaint and an order consolidating this action with another action pending in this court (In the

Matter of The Paderewski Foundation, Inc. on the Petition of Leon Zawisza) or, in the alternative, permitting service of an amended complaint in this action and an amended answer in the Zawisza proceeding and consolidating both proceedings for joint trial; (2) directing the service of a responsive pleading; (3) discontinuing further proceedings in this action; (4) to enjoin the respondents in the consolidated proceeding from representing themselves as officers, agents, directors or employees of the Foundation; (5) directing respondents to submit all books and other related records of the Foundation for inspection and examination; (6) discontinuing this action against the defendant Wos; (7) amending the title in this action and the Zawisza proceeding; (8) permitting service of a supplemental summons in both proceedings upon certain individuals not heretofore made parties; (9) consolidating other applications made by the respective parties which are sub judice; (10) directing the defendants in this proceeding and respondents in Zawisza matter to submit to pre-trial examination.

Plaintiffs commenced this action to invalidate a purported election held on June 5, 1967, in which defendants were elected officers and directors of the Paderewski Foundation; to enjoin defendants from representing themselves as officers, directors or employees of the Foundation; that defendant Malon cease representing the Foundation as counsel, and for other injunctive relief as well as money damages to the individual plaintiffs.

Defendants' answer denies all of the essential allegations of the complaint and also

contains several counterclaims to declare a membership meeting of the Foundation held on March 6, 1967, and the purported election of the plaintiffs as officers and directors, invalid, and to declare the meeting conducted by the defendants on June 5, 1967 and the election held as valid.

The companion action (Zawisza) was commenced pursuant to section 25 of the General Corporation Law, to declare the election held on June 29, 1967 and any subsequent elections invalid and to secure a new election pursuant to the by-laws of the Foundation as they existed prior to May 23, 1967.

It is sufficiently clear from examination of the morass of papers submitted on this application and thereafter by letters, telegrams and affidavits, as well as the previously filed papers, that the "temporary restraining order" could not have continued in effect without the tacit approval and extensive labors of all the parties herein. This action has been marked by appeals and cross appeals from almost every intermediate order rendered by this Court, further delaying its resolution.

It appears that the ordered references, including the issue of whether defendants are guilty of contempt for violation of the order of Mr. Justice Loreto, are scheduled to be heard on February 4, 1970. The latest appeal taken by defendants has been disposed of by the Appellate Division by order dated December 18, 1969. There is no reason why the parties should not now pro-

ceed with the scheduled hearings. Accordingly, defendants' motion to vacate the injunction is denied.

With respect to the cross motion, plaintiffs' counsel has joined in his notice of motion affirmative relief not only referable to this action but to the companion proceeding (Zawisza). Such procedure is improper. Both actions were started separately. They are independent, and involve many different facts. Consequently, this memorandum deals only with the affirmative relief requested in the Fales Action.

Amendments to pleadings are permitted at any time, unless prejudice is shown, to the end that the parties may have a full and just determination of the dispute upon the merits (Martin v. Katz, 15 A D 2d 767; CPLR 3025(b)). In the proposed amended and supplemental pleading, plaintiffs have withdrawn their cause for an accounting and the allegations are shorter in number and not as verbose and prolix as in the original complaint. There is no countervailing showing of prejudice.

Accordingly, plaintiffs are given leave to serve a copy of the proposed amended and supplemental complaint upon the attorney for the defendants within 10 days after service of a copy of this order with notice of entry.

That branch of plaintiffs' cross motion which seeks an order of consolidation is denied. CPLR 602 provides for consolidation where the actions involve a common question of law and fact. Plaintiffs have failed to show the requisite

similarity of facts arising from the same transaction to warrant consolidation. Moreover, organic consolidation would not be proper here because of the alignment of the parties (see Vidal v. Sheffield Farms Co., 208 Misc.438). The appropriate remedy is a joint trial. Accordingly, plaintiffs' application for alternate relief, a joint trial, is granted (see Padilla v. Greyhound Lines, 29 A D 2d 495).

Plaintiffs demand an examination and inspection of certain records of the Foundation, allegedly in possession of the defendants. Such disclosure is warranted, in the light of the allegations relating to defendants' collection and disbursement of funds belonging to the Foundation.

Accordingly, the discovery and inspection shall proceed at Special Term, Part II, of this court, on February 24, 1970, at 10 A.M., unless otherwise stipulated by the parties. Defendants are directed to produce all cancelled checks, bills, bank statements and vouchers from April 17, 1967 to date. However, the granting of this portion of plaintiffs' application shall in no way be construed to interfere with the scheduled hearings before the Special Referee.

Plaintiffs' application to discontinue the ordered references must be denied. The temporary injunction was prodicated upon a prima facie showing by plaintiffs that the election of June 5, 1967 was invalid. This provisional relief was supposedly "temporary" pending a report of the Special Referee. The court cannot vacate the reference, without of necessity vacating the

temporary injunction. Plaintiffs are in effect attempting to appeal the order entered on their own applications for injunctive relief.

That branch of plaintiffs' motion to discontinue the within action against defendant Wos is denied. Although plaintiffs now indicate that Wos had had a change of position and does not desire to challenge their election, there is no affidavit by Wos to that effect, and no proper showing made to warrant the court to exercise its discretion.

That branch of plaintiffs' application to amend the caption of the action is denied as academic.

Plaintiffs' further application to correct the caption in this action by substituting the name of George R. Englert for George Englert is granted.

Plaintiffs application for leave to serve a supplemental summons in this action to include Thaddeus Lazarewicz Lazarr, Leon Zawisza and Liliana Arlen Smoleniec as defendants is granted. Plaintiffs' allegations that these individuals have acted as representatives of the Foundation in a manner which contravenes the spirit and intent of the temporary restraining order, heretofore granted by Mr. Justice Loreto, indicates they should be made parties defendant in order to properly effectuate the prior decisions of this court. Leave is given to serve a supplemental summons together with a copy of the amended and supplemental complaint upon such additional defendants without undue delay. Such leave is not to be a basis for a delay of the hearings before the Official Referee.

So much of the cross motion as related to the pre-trial examination of defendants is denied as moot, in view of the decision of the Appellate Division on December 18, 1969.

Plaintiffs' motion numbered 162 of December 13, 1969, for consolidation of all other motions and other relief is granted only to the extent herein indicated and otherwise denied.

Dated: January 28, 1970.

/s/ A.L.F.
J.S.C.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants,

-against-

3734N

Edward S. Witkowski, et al.,
Defendants-Respondents,

Phyllis Bohleber, et al.,
Defendants.

An appeal having been taken to this Court by the plaintiffs-appellants from so much of an order of the Supreme Court, New York County (Fein, J.), entered on February 2, 1970, as denied plaintiffs' motion for consolidation, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so far as appealed from be and the same is hereby affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

Present
Hon. Francis J. Bloustein, Justice.

In the Matter of
The Paderewski Foundation, Inc.
On the Petition of
Leon Zawisza,

suing individually and on behalf of others similarly situated, pursuant to Section 25 of the General Corporation Law, to set aside a purported election of Directors and Officers at purported meetings held on June 19, 1967, and on or about June 28, 1968.

Upon the annexed petition of Leon Zawisza, duly verified the 27th day of September, 1968, and upon the exhibits annexed thereto,

Let The Paderewski Foundation, Inc. and Dorothy T. Fales, Haliburton Fales, George Englert, Isabel Englert, Sigmund Uminski, Mignon Zulinski, William Diefenbach and Edwina Rager show cause, at a Special Term, Part I of this Court, to be held at the Court House, 60 Centre Street, Borough of Manhattan, City of New York, on the 24th day of October, 1968, at 9.30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why a judgment and order should not be entered herein, pursuant to Section 25 of the General Corporation Law, vacating and setting aside the alleged elections

of directors and officers at purported annual meetings of said corporation held on June 28, 1967, and on or about June 26, 1968; and why said order should not direct that a due and proper meeting of all members of said corporation be held for the purpose of electing new directors, at which meeting the corporation shall be required to amend its amended certificate of incorporation so as to delete therefrom the designation of the date of the annual meeting of the corporation; and why the bylaws adopted on May 23, 1967, should not be declared null and void;

ENTER:

F.J.B.

J.S.C.

APPENDIX M

SUPREME COURT OF THE
STATE OF NEW YORK
SPECIAL TERM, PART 1
NEW YORK COUNTY
at the Courthouse thereof,
60 Centre Street, New York, New York
Present:
HON. JACOB MARKOWITZ, Justice.

In the Matter of
THE PADEREWSKI FOUNDATION, INC.
On the Petition of
DOROTHY T. FALES, et al,
Petitioners,
-against-
EDWARD S. WITKOWSKI, et al,
Respondents.

The following papers numbered 1 to 5 read on this motion,
SUBMITTED.

No. 143 on Calendar of February 2, 1970

Filed-Order to Show Cause -and Affirmation Annexed & Exhibits	1-2
Answering Affirmation	4
Replying Affirmation	5
O.S.C. Affidavit of Service	3

Upon the foregoing papers this motion is decided in accordance with accompanying memorandum decision.

Filed March 9, 1970
New York
County Clerk's Office

s/J.M.
J.S.C.

DECISION OF JUSTICE MARKOWITZ

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM : PART ONE

DOROTHY T. FALES, et al,
Plaintiffs,
-against-
EDWARD S. WITKOWSKI, et al,,
Defendants.

11339/1967

MARKOWITZ, J.:

Plaintiffs move for an order (1) directing acceptance by defendants of plaintiffs' original bill of particulars and of plaintiffs' further bill of particulars; and (2) directing the appearance of the defendants for examination before trial. In the moving affidavit, plaintiffs also request that defendant, Henry C. Malon, who is also the attorney for defendant Aleksandra Wos, be directed to execute a stipulation of discontinuance as against her.

By order dated December 18, 1969, the Appellate Division granted a prior motion by certain of the defendants to preclude plaintiffs "unless plaintiffs ... shall serve a bill of particulars in accordan ce with the demand within twenty days after service of a copy of this order ..." The Appellate Division order further provided that the examination of certain named defendants *shall take place commencing within twenty days after service of the bill of particulars on a date to be agreed upon between the parties or, failing such agreement, on a date within such period to be fixed by the justice presiding at Special Term, Part II .... Upon failure of plaintiffs to serve

the bill of particulars ... an order may be entered ex parte unconditionally precluding plaintiffs."

Plaintiff served a bill of particulars on January 15, 1970. Defendants rejected the bill of particulars contending that it was not timely served and was not in compliance with the demand in respect of items thereof numbered 4, 9, 10, 17, 18, 23, 26, 33, 34 and 39. Assuming the correctness of defendants' contention as to timeliness, it appears that the bill of particulars was served but one day late, while this slight delay might be overlooked, plaintiffs' efforts to compel acceptance of a further bill of particulars is a tacit acknowledgement by plaintiffs that their original bill of particulars did not comply with the demand. Furthermore, the proposed supplemental bill of particulars does not appear to comply with the demand.

In this posture of the case, the relief sought by the instant motion would in effect constitute a modification of the order of the Appellate Division; not within the power of this court (see: Davis, Inc. v. Merritt-Chapman & Scott Corporation, 30 A. D. 2d 765).

The motion is denied in respect of items 1 and 2 of the relief requested without prejudice to plaintiffs' right to seek appropriate relief in the Appellate Division.

The branch of plaintiffs' motion, seeking to compel the attorney for defendant was to execute a stipulation of discontinuance as against said defendant, is denied without prejudice (CPLR 3217(b)). It would appear

that a similar motion was made before Mr. Justice Fein and denied (163 N. Y. L. J. #23 (2/3/1970)p. 2).

Dated: March 6, 1970

s/ J. M.
J. S. C.

Filed
March 9, 1970
Co. Clerk's Office
New York

June 17, 1970

Present
Hon. Harold A. Stevens, Presiding Justice.

In the Matter of The Paderewski Foundation, Inc. on the Petition of Dorothy T. Fales, et al.,
Petitioners-Appellants,
-against-
George J. Suski, et al.,
Respondents-Respondents.
For Judgment under CPLR Article 78

3736N

An appeal having been taken to this Court by the petitioners-appellants from an order of the Supreme Court, New York County (Markowitz, J.), entered on March 9, 1970, denying petitioners' motion (1) directing acceptance of bills of particulars, (2) directing the appearance of the respondents for examination before trial, and (3) directing the attorney for Aleksandra Wos to execution a stipulation of discontinuance as against her, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Robbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER: Hyman W. Gamso, Clerk.

SUPREME COURT OF THE
STATE OF NEW YORK

Present: HON. FREDERICK BACKER
Justice

Fales, et al,
Plaintiffs,

v.

Witkowski, et al,
Defendants.

The following papers numbered 1 to 25 read on this motion SUBMITTED
No. 229 on Calendar of March 31, 1970

Notice of Motion-Exhibits and Affidavits Annexed	PAPERS NUMBERED
	1-5
Answering Affidavits Cross-Motion and Exhibits	6-23
Replying Affidavit	24
Supplemental Affidavit	25

Upon the foregoing papers this motion is decided in accordance with the accompanying memorandum decision.

Filed April 16, 1970
New York County Clerk's Office

s/F. B.
J. S. C.

Dated: April 28, 1970

APPENDIX N

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM: PART I

Dorothy T. Fales, et al.,
Plaintiffs,

-against-

Index No.
11339/1967

Edward S. Witkowski, et al.,
Defendants.

BACKER, J.:

Motions under calendar numbers 229 of March 31, 1970 and 217 of April 15, 1970 are consolidated and disposed of herein.

Defendants move for an order granting summary judgment dismissing the amended complaint based upon a preclusion order entered on March 20, 1970.

Plaintiffs were directed by order of the Appellate Division (entered on December 22, 1969) to comply with a conditional order of preclusion of this Court and serve a bill of particulars within twenty days after service of a copy of the order of the Appellate Division. Said order also provided therein defendants could enter an ex parte order of absolute preclusion. In the interim period between the entry order of the Appellate Division and the ex parte order of preclusion, entered on March 20, 1970, plaintiffs obtained leave by this Court to serve an amended supplementary pleading.

It has been held that the existence of an

order of preclusion against plaintiffs does not make available to defendants summary judgment dismissing the complaint (Israel v. Drei Corp., 5 A D 2d 987; Jersey v. Globe Requa Coal & Lumber Co., 13 A D 2d 507). Accordingly, defendants' motion is denied.

Plaintiffs cross-move for an order to (1) stay all proceedings for non-payment of costs, (2) deny defendants' motion-in-chief for summary judgment, (3) expunge the affidavits of defendant Witkowski and grant summary judgment, (4) discontinue this proceeding against defendants Witkowski and Witkowska, (5) strike defendants' answer, (6) vacate the ex parte order of March 20, 1970 and (7) advance a motion returnable April 30, 1970 for joint consideration herein.

Defendants do not deny or offer any excuse for their failure to pay the costs due plaintiffs. Plaintiffs entered a judgment for costs in the amount of $249.83 which has been unsatisfied since July 1, 1969. Under these circumstances all further proceedings are stayed unless within thirty days after the service of a copy of this order with notice of entry defendants pay plaintiffs the above-mentioned costs (see Assoc. Sales Analysts v. Weitz, 25 A D 2d 64).

That branch of plaintiffs' cross motion to deny defendants' motion-in-chief is rendered academic in view of the determination reached on the motion-in-chief.

Plaintiffs' further application to expunge the affidavits of Witkowski is denied as not warranted

under the circumstances disclosed.

That branch of the cross motion to discontinue the within action against defendants Edward Witkowski and Jeanette Witkowska is granted upon condition that said defendants pay their share of the judgment for costs secured by plaintiffs as hereinabove provided for (CPLR 3217(b)).

That branch of plaintiffs' motion to strike the answer is granted unless defendants comply with the terms of the prior order of this Court dated February 2, 1970 and submit to discovery and inspection at Special Term Part II of this Court on May 11, 1970, at 10 A.M.

That branch of plaintiffs' motion to vacate the ex parte order of March 20, 1970 is denied. Plaintiffs, having failed to comply with the terms of the conditional order of preclusion and the order of the Appellate Division, were thus not entitled to receive notice of the entry of the preclusion order dated March 20, 1970.

Plaintiffs have not advanced any cogent arguments to support their application to advance the motion returnable April 30, 1970 for joint consideration herein. Accordingly, that branch of the cross motion is also denied.

Plaintiffs' application under calendar number 217 of April 15, 1970 for an order appointing a guardian ad litem on behalf of defendant Edward S. Witkowski is denied. In the first place Witkowski has not received notice of plaintiffs'

instant motion. Secondly, plaintiffs have not shown that Witkowski is incapable of adequately protecting his rights (see Abrons v. Abrons, 24 A D 2d 970 (1st Dept.)).

Dated: April 28, 1970

J.S.C.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 19th day of January, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Arthur Markewich,
Theodore R. Kupferman,
George Tilzer, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Respondents,

11339/67
2986

-against-

Edward S. Witkowski, et al.,

Defendants-Appellants,

Phyllis Bohleber, et al.,

Defendants.

An appeal having been taken to this Court by the defendants-appellants from so much of an order of the Supreme Court, New York County (Backer, J.), entered on April 28, 1970, as denies defendants-appellants' motion for summary judg-

ment dismissing the complaint, and said appeal having been argued by Mr. Sidney S. Bobbe of counsel for the appellants, and by Mr. Edward Rager of counsel for the respondents; and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the order so far as appealed from be and the same is hereby affirmed. Respondents shall recover of appellants $50 costs and disbursements of this appeal.

ENTER:

Hyman W. Gamso
Clerk.

January 19, 1971

Present
Hon. Harold A. Stevens, Presiding Justice.

Dorothy T. Fales, etc., et al.,
Plaintiffs-Respondents,
-against-
Edward S. Witkowski, et al.,
Defendants-Appellants,
Phyllis Bohleber, et al.,
Defendants.

11339/67

Order, Supreme Court, New York County (Backer, J.), entered on April 28, 1970, insofar as it denied defendants-appellants' motion for summary judgment dismissing complaint, unanimously affirmed. Respondents shall recover of appellants $50 costs and disbursements of this appeal. The meagre and incomplete record does not even include a copy of the complaint sought to be dismissed. Our affirmance is based upon our understanding that Special Term merely held, and we agree, that "on this record it may not be held that plaintiff will be precluded by said prior order from introducing evidence at the trial sufficient to make a prima facie case." (Jersey v. Glode Requa C. & L. Co., 13 A D 2d 507, 508.)

Order filed.

APPENDIX O

SUPREME COURT OF THE
STATE OF NEW YORK
SPECIAL TERM, PART 1
NEW YORK COUNTY
Present:
HON. IRVING L. LEVEY,
Justice.

PADEREWSKI FOUNDATION, INC.
DOROTHY T. FALES, et al,
-against-
EDWARD S. WITKOWSKI, et al.

The following papers numbered 1 to ___
read on this motion, ARGUED
No. 39 on Calendar of May 14, 1970
File and order to show cause and
pleading -exhibits and
Affidavits Annexed 1-2
Answering Affidavit 3
Pleadings 4-6
Application for Stay & Exhibit 7-8
See Papers Companion Motion
68-155-159 this date.

Upon the foregoing papers this Motions numbered 39, 68, 155 and 159 on the calendar of May 14, 1970 are consolidated herein and are denied without prejudice to renewal upon the conclusion of the adjourned hearings before the special referee which shall be held on the scheduled dates heretofore arranged.

Filed:
May 19, 1970
New York County Clerk's Office

s/ I. L. L.
J. S. C.

May 18, 1970

SUPREME COURT OF THE
STATE OF NEW YORK
SPECIAL TERM, PART ONE,
NEW YORK COUNTY
at the Courthouse thereof,
60 Centre Street
New York, New York 10007
Present:
HON. IRVING L. LEVEY
Justice.

---x

Paderewski Foundation Inc.

-against-

Leon Zawisza, etc.

---x

The following papers numbered 1 to _____
read on this motion, ARGUED
No. 155 on Calendar of May 14, 1970

Papers	Numbered
Filed- Order to Show Cause and Affidavits Annexed	1-2
Answering Affidavit - exhibit	3-4
Affidavit for stay	5

See Papers Companion Motions
159-68-39 this date

Upon the foregoing papers this Motion is disposed of in accordance with decision in companion motion No. 39 of May 14, 1970, decided simultaneously herewith.

Filed May 19, 1970
New York County Clerk's Office
May 18, 1970

s/ I. L. L.
J. S. C.

SUPREME COURT OF THE
STATE OF NEW YORK
PART ONE, SPECIAL TERM
NEW YORK COUNTY
at the Courthouse thereof
60 Centre Street, New York, New York
Present: HON. IRVING L. LEVEY,
Justice.

DOROTHY T. FALES
BADEREWSKI FOUNDATION INC.
-against-
EDWARD S. WITKOWSKI et al,

The following papers numbered 1 to ____
read on this motion, argued
No. 68 on Calendar of May 14, 1970
Notice of Motion - Copy of
Petition and Petition Annexed 1-2
Annexed
Answer and Answering Affidavit 3-4
Exhibit Application for Stay &
Exhibit 5-6
File Papers Companion Motion
39- 155-159 of this date.

Upon the foregoing papers this motion is disposed of in accordance with decision in companion motion No. 39 of May 14, 1970, decided simultaneously herewith.

Filed May 19, 1970
Dated May 18, 1970

s/I. L. L.
J. S. C.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants,

-against-

3738N

Edward S. Witkowski, et al.,
Defendants-Respondents,

Phyllis Bohleber, et al.,
Defendants.

An appeal having been taken to this Court by the plaintiffs-appellants from an order of the Supreme Court, New York County (Levey, J.), entered on May 19, 1970, denying plaintiffs' motion to strike the answer to the petition, to consolidate the action with the proceeding In the Matter of The Paderewski Foundation, Inc., on the Petition of Leon Zawisza, and to consolidate the instant motion with the motions sub-

mitted to Backer, J. on March 31 and April 15, 1970, without prejudice to renewal, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the appeal from the order entered on May 19, 1970, be and same is hereby dismissed. The merits of the appeal having been briefed and argued, were the Court not dismissing the appeal, it would have affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

In the Matter of The Paderewski Foundation, Inc. on the Petition of Leon Zawisza,
Petitioner-Respondent,

3740N

-against-

The Paderewski Foundation, Inc., Dorothy T. Fales, et al.,
Respondents-Appellants.

An appeal having been taken to this Court by the respondents-appellants from an order of the Supreme Court, New York County (Levey, J.), entered on May 19, 1970, denying respondents-appellants' motion for consolidation, without prejudice, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondent; and due deliberation having been had

thereon,

It is unanimously ordered that the appeal from the order entered on May 19, 1970, be and the same is hereby dismissed. The merits of the appeal having been briefed and argued, were the Court not dismissing the appeal, it would have affirmed. Respondent shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

SUPREME COURT - NEW YORK

In the Matter of The Paderewski Foundation, Inc.
on the Petition of
Dorothy T. Fales, et al.,
Petitioners,

-against-

Edward S. Witkowski, et al.,
Respondents.
for Judgment under CPLR Article 78

IT IS HEREBY STIPULATED AND AGREED by and and between the attorney for the petitioners and the attorney for the respondents except Theodore F. Domaradzki and Leon Nadrowski that the above entitled proceeding be and the same hereby is discontinued as against the respondents Edward S. Witkowski and Jeanette Witkowska, without costs to them or to the petitioners.

May 7, 1970

s/Forman Bullock
Attorney for Petitioners

s/Sidney S. Bobbe
Attorney for Respondents except Theodore F. Domaradzski and Leon Nadrowski

APPENDIX P

Present
Hon. Paul A. Fino, Sr., Justice.

Dorothy T. Fales, et al.,
-against-
Edward S. Witkowski, et al.

Motion No. 101

The following papers numbered 1 to 21 read on this motion ARGUED No. 101 on Calendar of September 21, 1970

	Papers Numbered
Cross Motion filed - Order to Show Cause - and Affirmation Annexed & Exhibit	1 - 2
Answering Affidavits & Exhibits	4 - 15
Replying Affirmation	16 - 17
Rejoinder Affirmation	18
Osc Affirmation of Service	3
Filed Papers See Papers #1 to 27 of Motion #100 of this date	19
See Papers #1 to 5 of Motion #102 of this date	20
See Papers #1 to 12 of Motion #103 of this date	21

Upon the foregoing papers this Motion to punish Edward Rager, Esq. and Forman Bullock, Esq., for their failure to deposit with the Referee, as directed, at his office two minute books previously marked in evidence before the Referee and to allow respondent's attorney, Mr. Bobbe, to examine said minute books, under the supervision of the Referee is granted and both of petitioners' counsel, Mr. Rager and Mr. Bullock are fined $250 each.

The contemnors may purge themselves by depositing the two minute books at the office of the Referee, Seymour Beiber, Room 639, within 10 days after service of a copy of the order to be entered hereon with notice of entry thereof.

The cross-motion is just one more example of either the inability or unwillingness of petitioners' counsel to end the confusion attendant herein. The motion is not made with respect to the instant matter but to another. Moreover, no copies of orders referred to are annexed to the papers so as to afford the Court some assistance. The cross-motion is denied without prejudice to a renewal in the appropriate proceeding.

Filed September 25, 1970
New York County Clerk's Office

Dated: September 24, 1970

s/ P.A.F.
J.S.C.

Present
Hon. Paul A. Fino, Sr., Justice.

Paderewski Foundation (Leon Zawisza) — Motion No. 103

The following papers numbered 1 to 15 read on this motion ARGUED No. 103 on Calendar of September 21, 1970

	Papers Numbered
Notice of Motion and Affidavits Annexed	1 - 2
Answering Affirmation and Exhibits	3
Replying Affirmation and Exhibits	4 - 12
See Papers #1 to 27 of Motion #100 of this date	
See Papers #1 to 18 of Motion #101 of this date	
See Papers #1 to 5 of Motion #102	

Upon the foregoing papers this Motion by respondents, in what shall be called the "Zawisza matter", seeking to (1) dismiss this petition on the grounds that the issues herein are identical with another outstanding petition seeking mandamus relief; (2) terminate the reference on the grounds that the referee has disobeyed prior orders of Mr. Justice Fein and Mr. Justice Levey; and finally for additional relief. It appears that this petition has been hald to be the appropriate manner in which to proceed by the appellate court and therefore the first branch of the motion is denied.

With respect to the second branch of the motion an insufficient showing has been made to warrant the relief sought thereby. Finally, the last branch of the motion is denied without prejudice to a renewal upon papers which shall reasonably apprise the court of the nature of the relief sought.

Dated: September 24, 1970

P.A.F.
J.S.C.

Filed September 30, 1972
New York County Clerk's Office

Present
Hon. Paul A. Fino, Sr., Justice

Dorothy T. Fales, et al.,
-against-
Edward S. Witkowski, et al.

Motion No.
100

The following papers numbered 1 to 30 read on this motion ARGUED No. 100 on Calendar of September 21, 1970.

	Papers Numbered
Notice of Motion Affirmation & Exhibit Annexed	1 - 3
Cross Motion Answering Affidavits & Exhibits & Affirmation	4 - 18
Reply Affirmation	19
Rejoinder Affirmation & Exhibits	20 - 22
Rejoinder Affirmation	23
Sur-Rejoinder Affirmation	24
Court Notes Exhibits	25 - 26
Court Minutes 9/11/70	27
See Papers #1 to 18 of Motion #101 of this date	28
See Papers #1 to 5 of Motion #102 of this date	29
See Papers #1 to 12 of Motion #103 of this date	30

Upon the foregoing papers this Motion to dismiss the complaint, in an injunction action entitled Dorothy T. Fales, et al., v. Edward S. Witkowski, et al., on behalf of all the defendants except Wos, Nadrowski and Domardzki, on the grounds of unreasonable neglect to

proceed, is denied. The moving papers are insufficient on their face to show plaintiffs are unreasonably neglecting to proceed.

Petitioner's cross-motion is devoid of merit and accordingly denied.

Filed September 25, 1970
New York County Clerk's Office

Dated: September 24, 1970 s/ P.A.F.
J.S.C.

County Clerk's No. 11339, 1967
Spec I Liber F52 Line 8, 1970

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM PART I, NEW YORK COUNTY

Present
Hon. John Murtagh, Justice.

Dorothy T. Fales, et al.,

-against-

Edward S. Witkowski, et al.

The following papers numbered 1 to 5
read on this motion submitted
No. 31 on Calendar of July 20, 1970

	Papers Numbered
Notice of Motion-Order to Show Cause- and Affidavits Annexed	1 - 2
Answering Affidavit	3
See Papers #1 to 10 of motion #32 of this date	4
See Papers #1 to 5 of motion #183 of this date	5

Upon the foregoing papers motions numbered 31, 32 and 183 on the calendar of July 20, 1970 are consolidated herein and the motion is adjourned to be placed on the calendar of this court for September 2, 1970, in order to permit the petitioners to marshall evidence considered essential and to obtain the subject stenographer's minutes referred to herein. This controversy has a confused and badly splintered history of protracted litigation, including a pending reference

which is to be continued at a later date. The delay in the resolution of the multiple relief here requested will not prejudice any of the parties hereto. Insufficient is shown by defendants to warrant ordering additional security as a condition of the continuance of the temporary injunction herein at this stage of the proceedings.

Dated: August 14, 1970 J.S.C.

EXHIBIT- Record on Appeal in the Appellate Division, Volume II(A-410-411) described as "Excerpt from Stenographer's Minutes on September 11, 1970 containing rulings by Justice Tierney on August 17, 1970 and Justice Lupiano on September 11, 1970."

This is one of many papers on several motions made returnable on different dates in June, July and August under the titles of the Fales Equity, Zawisza Proceeding and the Mandamus Proceeding. The most important was the motion to punish Bullock and Rager for contempt. Through the insistence of Bobbe, some of the motions appeared before Supreme Court Justice Murtagh, who adjourned them to September 2, 1970 with an opinion that this would help to eliminate using our word throughout the litigation - "splintering"- and have them all heard by one Justice. However, Justice Tierney, who had the same purpose but was not aware of Justice Murtagh's decision adjourned the motions before him to September 11. Thus, Supreme Court Justice Brust had half of the papers on September 2, 1970 which at the insistence of Mr. Bobbe he refused to adjourn and accepted to find only later (see his decision of August 28, 1970 - not appealed). The other half came before Justice Lupiano, who in turn made the rulings in the exhibits and adjourned the motions to September 21, 1970:

(4) THE COURT: I have a note here made by Mr. Justice Tierney:

"Adjourned to 9/11/70 peremptorily. Referee Bieber is the referee appointed in this matter. I suggest, upon his return to this Court, prior to that time, that he review these papers and be available on 9/11/70 in Special Term, Part I, to assist the Court then proceeding with respect to this matter."

(5) THE COURT: I am not going to hear this unless Mr. Bieber is here, and I would think, therefore, that the judge who must hear any argument regarding this should have Mr. Bieber here. I am sure that Judge Tierney had a very salutary purpose in doing it.

****

THE COURT: In any event, Mr. Bieber will be here. These matters are adjourned to Tuesday. Mr. Bieber will be directed to be here at that time.

****

(10) THE COURT: Therefore what I have said, and moreover it was suggested by this note that I have already referred to, namely from Judge Tierney, whatever benefit may be derived, we do have Mr. Bieber's knowledge of the thing, so that perhaps some judge might, with expert judicial husbandry, do something to this very perplexing matter.

****

As a result Justice Brust, despite all attempts to induce him to have all the motions

before him referres also to the Justice presiding on September 21, 1970, retained them and then on September 28, 1970 wrote an opinion (no appeal on that) expressing amazement how papers could be submitted to him in such confused and incomplete state. Those papers were entitled both under the Fales Mandamus and in the Fales Equity Action.

On September 21, 1970, Judge Fino refused, as his order punishing Bullock and Rager for contempt showed, to consider important papers in opposition - which included the above "Exhibit". His decisions on September 25, 1970 showed this.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Appellants,

-against- 3743N

Edward S. Witkowski, et al.,

Defendants-Respondents,

Phyllis Bohleber, et al.,

Defendants.

An appeal having been taken to this Court by the plaintiffs-appellants from so much of an order of the Supreme Court, New York County (Fino, J.), entered on September 25, 1970, as punishes Edward Rager and Forman Bullock for contempt of court and directs the deposit by them of certain

records with the Referee, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so far as appealed from be and the same is hereby affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,
Plaintiffs-Appellants,

-against-

3741N

Edward S. Witkowski, et al.,
Defendants-Respondents,

Phyllis Bohleber, et al.,
Defendants.

An appeal having been taken to this Court by the plaintiffs-appellants from so much of an order of the Supreme Court, New York County (Fino, J.), entered on September 25, 1970, as denied plaintiffs' cross-motions to refer defendants' motion to dismiss the complaint to Murtagh, J., to dismiss said motion or to adjourn said motion, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by

Mr. Sidney S. Bobbe as counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the appeal from the order entered on September 25, 1970, be and the same is hereby dismissed. The merits of the appeal having been briefed and argued, were the Court not dismissing the appeal, it would have affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

In the Matter of the Paderewski Foundation, Inc. on the Petition of Leon Zawisza, 3742N

Petitioner-Respondent

suing individually and on behalf of others similarly situated, pursuant to Section 25 of the General Corporation Law, to set aside a purported election of Directors and Officers at purported meetings held on June 29, 1967 and on or about June 28, 1968.

The Paderewski Foundation, Inc., Dorothy T. Fales, et al.,

Respondents-Appellants.

An appeal having been taken to this Court by the respondents-appellants from so much of an order of the Supreme Court, New York County (Fino, J.), entered on September 30, 1970, as denied respondents-appellants' motion to dismiss the petition and to terminate the reference, and said appeal having been argued by Mr.

Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so far as appealed from be and the same is hereby affirmed. Respondent shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

Present
Hon. Paul A. Fino, Sr., Justice.

In the Matter of the Paderewski Foundation, Inc.

Motion No. 171

The following papers numbered 1 to _____ read on this motion, SUBMITTED-REFERRED No. 171 on Calendar of November 6, 1970

	Papers Numbered
Filed-Order to Show Cause - Exhibits and Affidavits Annexed	1 - 13
Answering Affidavit	14
Reply Affidavit & Exhibits	15 - 18

See Papers Companion Motions #170-172, 173 this date.

Upon the foregoing papers this motion to reargue is in all respects denied and the stays contained in the order to show cause are vacated.

Dated: December 4, 1970

s/ P.A.F.
J.S.C.

Filed December 7, 1970
County Clerk's No. 11339, 1967
Spec I Liber P131 Line 7, 1970

Present
Hon. Paul A. Fino, Sr., Justice.

In the Matter of the Paderewski Foundation, Inc.

Motion No. 172

The following papers numbers 1 to _____ read on this Motion, submitted referred No. 172 on Calendar of November 6, 1970

	Papers Numbered
Notice of Motion-Order to Show Cause-and Exhibits Annexed	1 - 4
Replying Affidavit and Exhibits	6 - 8

See Papers Companion Motions #170-171-173 this date.

Upon the foregoing papers this Motion to reargue is in all respects denied and the stays contained in the order to show cause are vacated.

Dated: December 4, 1970

s/ P.A.F.
J.S.C.

Filed December 7, 1970

Present
Hon. Paul A. Fino, Sr., Justice.

In the Matter of the Paderewski Foundation, Inc.

Motion No. 173

The following papers numbered 1 to _____ read on this motion submitted referred No. 173 on Calendar of November 6, 1970.

	Papers Numbered
Notice of Motion-Exhibits-and Affidavits Annexed	1 - 4
Answering Affidavit	5
Replying Affidavit & Exhibits	6 - 10

See papers Companion Motions #170-171-172 this office.

Upon the foregoing papers this Motion to reargue is in all respects denied.

Dated: December 4, 1970

s/ P.A.F.
J.S.C.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

In the Matter of The Paderewski Foundation, Inc. on the Petition of Leon Zawisza,

Petitioner-Respondent,

-against-

3746N

The Paderewski Foundation, Inc., Dorothy T. Fales, et al.,

Respondents-Appellants.

An appeal having been taken to this Court by the respondents-appellants from an order of the Supreme Court, New York County (Fino, J.), entered on December 7, 1970, denying reargument, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondent; and due deliberation having been had thereon,

It is unanimously ordered that the appeal from the order entered on December 7, 1970, and the same is hereby dismissed as non-appealable. The merits of the appeal having been briefed and argued, were the Court not dismissing the appeal, it would have affirmed. Respondent shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 17, 1971.

Present
Hon. Harold A. Stevens, Presiding Justice,
Louis J. Capozzoli,
Owen McGivern,
George Tilzer,
Daniel E. Macken, Justices.

Dorothy T. Fales, et al.,

Plaintiffs-Appellants,

-against- 3744N

Edward S. Witkowski, et al.,

Defendants-Respondents,

Phyllis Bohleber, et al.,

Defendants.

An appeal having been taken to this Court by the plaintiffs-appellants from so much of an order of the Supreme Court, New York County (Fino, J.), entered on December 7, 1970, as denies plaintiffs' cross-motion to strike certain notices of motion and papers submitted by defendants herein, to vacate the orders of Fino, J. which punish

among others, the attorney and counsel for plaintiffs for contempt of court, and said appeal having been argued by Mr. Edward Rager of counsel for the appellants, and by Mr. Sidney S. Bobbe of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the appeal from the order entered on December 7, 1970, be and the same is hereby dismissed as non-appealable. The merits of the appeal having been briefed and argued, were the Court not dismissing the appeal, it would have affirmed. Respondents shall recover of appellants one bill of $30 costs and disbursements to cover Appeals Nos. 3734N-47N.

ENTER:

Hyman W. Gamso
Clerk.

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM: PART I

In the Matter of
THE PADEREWSKI FOUNDATION, INC.
on the Petition of
DOROTHY T. FALES, et al.,

Petitioners,

-against-

Index No.
11339/67

GEORGE J. SUSKI, et al.,

Respondents

for Judgment under CPLR Article 78

BRUST, J.:

Three motions were consolidated by order of a justice of this court and adjourned to permit petitioners to marshall evidence. Since that date there has not been a submission of any further affidavits containing probative facts.

The papers submitted on these motions are replete with charges and countercharges by the parties and their attorneys alleging improper conduct by the adversaries including the attorneys. There is such an outpouring of emotion concerning the improprieties, including criminal acts alleged to have been committed, that the parties overlook stating the necessary facts in support of and

in opposition to the motions. The papers contain so many irrelevancies that the issues involved in the motions are lost and they result in the very delay which both sides profess to avoid.

Some examples of the defects in the papers appear in the motion by respondents for an order to direct the petitioners to obtain a separate index number for an Article 78 proceeding and for judgment for failure to reply. Petitioners cross-move for an order, inter alia, to strike the answer to the petition due to defective verification. Nowhere do the parties submit the petition, state when it was served and when the answer was served. Each side relies upon other orders including one allegedly providing for a stay which are not supplied to the court. A copy of the allegedly defective verification is not submitted. A notice of motion is submitted, to dismiss for failure to prosecute, but no supporting papers are annexed.

By notice of motion dated July 17, 1970, petitioners seek an order directing entry of default judgment against respondent Nadrowski, claiming one attorney represents him. The same motion is made by notice of motion dated July 17, 1970 specifying as additional grounds the failure to appear for pre-trial disclosure. Here petitioners claim a different attorney represents Nadrowski. The parties are confusing the issue so much that they do not know themselves that the same motion is made twice. The motions insofar as they seek relief against Nadrowski are denied. There is no attempt to prove service of

the petition or any notice for disclosure upon him. His attorney, in an affidavit which goes directly to the issues involved, denies receipt of any of these documents and denies receipt of certain of the notices of motion. The court notes that the affidavits of service on the other notices of motions and affidavits fail to indicate that service was made upon Nadrowski's attorney.

The court will not cull through the voluminous county clerk's file to in effect redraw the inartistically prepared papers. This information is to be presented by the parties instead of page after page of irrelevancies. Except as to the motions directed toward Nadrowski, the motions are denied with leave to renew upon proper papers. These papers shall avoid the charges of impropriety leveled by each side which have no bearing on the motions. They shall include the relevant facts with copies of supporting proof. Copies shall be served upon the attorneys for all parties who have appeared.

Dated: September 28, 1970.

J.S.C.

APPENDIX Q

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Dorothy T. Fales, et al.,
Plaintiffs,
v.
Edward S. Witkowski, et al.,
Defendants.

11339-67
Equity Action

Dorothy T. Fales, et al.,
Petitioners,
v.
George J. Suski, et al.,
Respondents.

11339-67
Mandamus
Proceeding

Leon Zawisza,
Petitioner,
v.
The Paderewski Foundation, Inc., et al.,
Respondents.

15371-68
Motion to
Vacate
Judgment

Take notice that on the judgment under the title of the Fales Equity Action and the Zawisza Proceeding entered on February 9, 1972 pursuant to a decision by Mr. Justice J. Leff on the petition of Leon Zawisza and the answer thereto, on the annexed affirmation of Forman Bullock, affidavits of George R. Englert, Frank T. Carmody, and Henry Del Rosso, dated February 19, 1972, and the affidavits of Gaspare Butera, Mary MacAlister, Arturs Kirulis and Frank D. Mather, sworn to February 17, 1972, on the notice of motion dated January 14, 1972, under the title of all three above entitled action and proceedings

and all the papers recited therein, submitted to Mr. Justice Leff and the minutes of the hearing before him on November 4, 1971, and of the trial on January 17, 1972, both filed in Court simultaneously with the filing of these papers and on all the papers and exhibits submitted to Mr. Justice Leff on January 17, 1972, jointly with the affirmation of Stanley M. Lazarus, dated January 14, 1972, on the affirmation of Lewis Allinson of January 29, 1972, and the affirmation of Stanley M. Lazarus of January 29, 1972, submitted in opposition to the signing of the above judgment (both before Mr. Justice Leff), on petitioner's Zawisza proposed findings of fact and conclusions of law, dated January 7, 1972, on the orders of Mr. Justice Fino, entered on or about September 25 and September 28, 1970, respectively, punishing Forman Bullock and Edward Rager for contempt ..... on the orders of the Appellate Division of June 17, 1971, affirming the order of Justice Fein entered on or about February 2, 1970, permitting the amendment of the complaint in Fales action by a supplemental amended pleading, to wit, a petition in mandamus, and inclusion therein as respondents, among others, Leon Zawisza, and on the order of the Appellate Division dismissing the appeal therefrom (June 17, 1971) and the order of same date affirming said order of Justice Fein and on the orders of the Appellate Division of June 21, 1971, reciting in their dismissal of appeals from Mr. Justice Levy that they were made without prejudice of renewal of the motion by petitioners in Mandamus to strike, among others, the answer to the Mandamus Proceeding as scandalous and for other relief, and on all the records and briefs pertaining thereto, the petitioners in

Mandamus and respondents in Zawisza and also to the extent that the aforesaid judgment which recites merely the Fales Equity Action and denies relief and grants it respectively as to a stipulation of discontinuance referred to in the decision of the Court and in said judgment pertains and affects to the rights of the petitioners in Mandamus, formerly plaintiffs in the Equity Action, and as it affects individually Forman Bullock, Edward Rager and bona fide members, directors, officers of The Paderewski Foundation, not named in said judgment, but affected and aggrieved thereby, will move before Mr. Justice Leff at Trial Term, Part V, of the Supreme Court...on February 29, 1972,...for an order vacating said decision and judgment, granting the undecided cross-motion made on January 17, 1972, seeking among others judgment for petitioners in Mandamus, dismissing the Zawisza Proceeding, or in the alternative vacating the default in the participation in the trial of Zawisza and restoration for trial before court and jury of the Mandamus Proceeding, granting leave in the event judgment in the Mandamus for petitioners is not granted to serve the proposed supplemental and amended petition... and pending the determination of this application staying all proceedings under such judgment...

Dated: February 19, 1972

Forman Bullock
Attorney for Fales as
Plaintiffs, Petitioners
and Respondents

To: Sidney S. Bobbe
Attorney for Petitioner Zawisza Respondents in
Mandamus and Defendants in Fales Action

Affirmation of Bullock in Support of Motion to Vacate Judgment

Forman Bullock, an attorney at law, affirms as follows under penalties of perjury:

I am the attorney for petitioners (formerly described as plaintiffs) in the Fales Mandamus Proceeding and respondents The Padarewski Foundation, Inc., et al, in the Zawisza Proceeding.

This is an application for the following relief:

***

c. To vacate said judgment on the ground:
(1) that it grants relief not requested in the Petition and on matters stricken as scandalous and irrelevant by the order of Justice Saypol of February 4, 1969;

(2) that it is contrary to evidence and not within the scope and power of the Court under Section 25 of General Corporation Law;

(3) that it grants relief contrary to express admissions;

(4) that it is based on perjurious testimony;

(5) there is absolute failure of proof and due process as to the judgment against Edward Rager and Forman Bullock;

(6) that it overlooks the fact that at the

time Zawisza instituted the proceeding and at no time before then was he a voting dues paying member of the Foundation, that he is not aggrieved and comes into Court as a wrongdoer, embezzler of Foundation funds with unclean hands and a person injurious and hostile to it;

(7) that it omits any definite adjudication as to why the original certificate of incorporation is also void and that it voids the amended one although the petition never asked for such relief and the proposed conclusions of law do not contain such a provision;

(8) that it omits necessary parties and enjoins those who are not officers or directors;

(9) that it appoints Zawisza, a partisan wrongdoer as an arbiter of a fair election;

(10) that is provides for holding an election on a Holy Day - Sunday;

(11) that the maintenance of the separate Zawisza proceeding despite the prior lawsuit in which all issues should have been determined is contrary to a fair and just administration of justice and that the decision and judgment violate elementary rules of due process of law and the Constitution of the United States and State of New York and judicial and lawyers ethics.

(12) that the trial in absentia was unjust in view of refusal of trial Justice to consider a

vital preliminary motion, inability of counsel to know what will be tried, sickness of witnesses and above all refusal to permit new counsel to obtain a reasonable adjournment.

d. To obtain an immediate adjudication on the cross motion made by me on January 17, 1972 ...

e. To dismiss the Zawisza Proceeding; or in the alternative,

f. To vacate the default in participation in said trial in the Zawisza Proceeding if it is not included in the Mandamus Proceeding;

g. To restore for trial the Mandamus Proceeding before a Court and jury in the event the motion for judgment therein in favor of the petitioners is not granted; and in the latter event

h. To grant leave to serve the proposed amended and supplemental petition;

i. To direct Leon Zawisza to supply forthwith the undersigned with true copies of all exhibits introduced at the Zawisza abortive trial on January 17, 1972;

j. To vacate in any event the judgment for costs in that the items therein are based on baseless assertions as to term fees, the proceeding as such never having been noticed for trial and the costs for the minutes were

not incurred for the trial;

On January 17, 1972, my former law associate for many years Edward Rager appeared in this Court with Stanley M. Lazarus, Esq., who presented to this Court an affirmation requesting an adjournment for the reasons stated in that affirmation, the principal reason being that for economic reasons occasioned by unprecedented violation of due process of law I was obliged to cease all activity in any litigation since January 4, of this year, and that the service by Mr. Bobbe of a motion for summary judgment in the Mandamus Proceeding and the simultaneous service by him of a notice to produce in the Zawisza Proceeding and other conduct indicated that it was his continued strategy and intention (pursued since the fall of 1968 when he started the Zawisza Proceeding) not to try the Mandamus Proceeding but merely the Zawisza Proceeding and since Mr. Lazarus obviously did not have enough time to study the voluminous records of this litigation, he requested an adjournment till April 17, 1972.

Edward Rager, who has acted during a part of this litigation as counsel (George Trosk, Esq. and others, too) has been on the point of a total exhaustion caused by an unprecedented violation of due process through much of this litigation, virulent personal attacks on him by Bobbe and persons allied and sympathetic to him and the coincidental, quite successful due to benevolent and almost sympathetic permissiveness by the courts thus far attempts to liquidate Edward Rager, his wife, Edwina Rager, his loyal clients, both as human beings, citizens, professionally, economically

with continued danger to their very lives without any succor whatever from the courts and callous indifference by law enforcement agencies.

Since in the New York Law Journal there was a notice stating that the only way motions could be made before Justice Leff was by obtaining permission from his secretary Mr. Green - which provision I consider unconstitutional - but each time I spoke tohim he denied such permission, and stated that I would have to wait till the day when the matter appeared before Judge Leff for pretrial or trial.

On November 4, 1971, Bobbe, Edward Rager and I appeared before Justice Leff and we renewed our request for the making of needed motions, which on our part required an application to vacate the stipulation of discontinuance of Fales under the title of the original equity action and either judgment for us in Mandamus or leave to serve an amended supplemental petition. This was emphasized by me to Mr. Green during several telephone calls and in my letters to Justice Leff in response to the avalanche of letters to Bobbe, who, too, stated that he wanted to make a motion....to have Judge Leff refer the Zawisza Proceeding to the Referee but preferably to Justice Saypol. I believe that Justice Leff understood clearly on November 4, 1971 that the Mandamus Proceeding is the only one where all the issues should be jointly tried (SM November 4, 1971, p. 38).

***Yet in several letters and in a memorandum "of law" submitted by him shortly before November 4, 1971, without any permission by Mr. Green as

far as I know, Bobbe insisted that because of the stipulation of discontinuance of the Fales Equity Action there was nothing before Judge Leff and the Zawisza Proceeding should either go to Judge Saypol or to the Referee! This on and off Finnegan has been going on throughout this litigation.

If that were so, Rager pointed out, then Fales should be referred to Justice Loreto who has original first jurisdiction in the litigation.

After Judge Leff finally decided that he would try the Mandamus Proceeding Bobbe changed his mind again and asked whether the Zawisza Proceeding could be heard, too (3M57) to which Rager significantly replied, addressing himself to Justice Leff:

> "If you decide that it is not covered by the Mandamus Proceeding."

To which Mr. Bobbe responded:

> "Alright."

It was obvious that plain fairness required a decision by Judge Leff on that in ample time before any trial!

***Judge Leff denied the Bobbe motion... but he refused to consider our cross-motion and merely marked it for identification.

This refusal I submit is also violative of due and fair process of law.

***...Bobbe appeared as counsel on an appeal from the order of Justice Loreto and there he devoted most of his time and effort to attacking Rager's retainer. The eminent George Trosk argued that appeal with me assisting.

Chief Judge Botein stated off the Bench that the retainer was very fair, yet Judge Leff improperly adjudges to the contrary and converts Rager into a principal respondent and evildoer, no doubt influenced by the Fino order and the perjured testimony. ***

Ever since Bobbe has missed no trick, no virulent indecent personal attack on Rager, no device to avoid any adjudication on the merits in the Fales action but to substitute for it the Zawisza Proceeding and he succeeded in that before Judge Leff marvelously for the cause of injustice on January 17, 1972. Before Judge Leff Bobbe branded Rager as a "FIEND" but FIENDISH indeed have been Bobbe's tactics, fiendish the concoctions of Zakrzewska, Malon and Zawisza in their very brief but perjurious testimony before Judge Leff and fiendish the judgment he concocted!

At any rate, Judge Leff, though ruling on Bobbe's motion, declined and failed to decide our cross-motion and merely marked our motion papers for "identification" and failed to give us fair notice as to his decision whether and how Zawisza would be joined with the Mandamus (SM November 4, 1971).

It was obvious that Bobbe arrived in Court quite prescient that he would only have to try the

Zawisza and not the Mandamus Proceeding. His proposed findings of facts and conclusions, which he submitted to Justice Leff were only for Zawisza.

For all the above and other reasons stated in the motion papers and in open Court, Rager could not possibly participate in the precipitate, abortive and fragmentary perfunctory Zawisza trial.

The Bobbe witnesses were permitted to testify as to matters not contained in the Zawisza Petition and as to others which were expressly stricken by the order of Justice Saypol on February 4, 1969 (paras. 15, 16, 28-42 inclusively).

Though time and again in Sales briefs, memoranda and in the proposed findings of fact submitted by Bobbe the validity of the March 6, 1967 meeting is expressly admitted and not challenged nor the election or any other acts taken at that meeting attacked and the Zawisza petition plainly in paragraph ten thereof confirms it, somehow the Bobbe judgment by Justice Leff declares null and void all proceedings since February 13, 1967.***

The allegation that there was some informal understanding at the meeting on March 6, 1967 (para. 40 of the petition) that the election was only for a period of three months, was stricken by Mr. Justice Saypol. Such an understanding was obviously void under the old by-laws. New elections after three months, could be only held under new by-laws but the validity of the adoption of such new by-laws on May 23, 1967 was challenged.

The Zawisza Petition merely challenges the elections on June 29, 1967 and 1968 because of the alleged invalidity of the by-laws adopted on May 23, 1967. Assuming that contention to be correct, the incumbents under the prior existing by-laws and practice pursued by the Foundation through the eighteen years of Witkowski regime, those elected on March 6, 1967 would continue in office for at least two years and also thereafter for lack of any new valid election.

***The decision and judgment in Zawisza should be vacated for the following reasons:

a. The Zawisza Petition seeks the amendment of the amended certificate of incorporation by deleting therefrom merely the June 29 date for annual meeting. This is moot since the record undisputably shows that this provision for June 29 was insetted in the by-laws and later again amended for November 6, Paderewski's birthday. (See proposed supplemental and amended petition in Mandamus submitted on January 17, 1972).***

f. ...the judgment grants relief not sought in the petition. The Zawisza petition alleges:

> "10. That on March 6, 1967, said annual meeting was duly held, a quorum being present, and its business was conducted in accordance with said notice." (notice attached to petition).

Nothing is contained in the petition that the directors, who included the Fales respondents in

Zawisza, the Witkowskis, one Furka, Nadrowski, Bayer, Bohleber, Domaradzki, were not properly elected in accordance with the by-laws then in effect.

Nothing in the Zawisza petition controverts this, yet the decision and judgment void in effect the elections of directors (which included the Witkowskis(!)) thereat on March 6, 1967 and all their acts.***

During the five last years the Foundation arranged for many activities (more and better than during the prior eighteen years). Concerts on WQXR (director of station called story about Paderewski and Foundation prepared by Rager "fascinating". NBC for the first time in years had a story on Paderewski in June 1970 on TODAY SHOW. Rager stopped thus far the removal of the Heart of Paderewski to communist Poland (see attached copy of letter from Zakrzewska to one Grabowski and copy of letter from her to Rager delivered to him in May 1967). At his instance, the Foundation took a stand for justice and freedom not only in Poland but in many other countries. It protested versus the refusal by the communist regime of a visa to Richard M. Nixon. It had great gatherings of hundreds of eminent persons. A historical book on Paderewski is in preparation.

Where did the baseless date of February 13, 1967 come from?

At no time was there any challenge to any specific activities, except once by an attorney hired by Zawisza, Malon and Zak to whom they

paid after the publication of the Loreto injunction $2,500, out of Foundation funds. Mishel protested against the best celebration of Paderewski birthday on November 6, 1968!

The Foundation held no elections in June 1968 and no valid testimony on that was affirmed.

1. The designation of Zawisza, the perjurer, impostor, embezzler, who called in the very Chambers of the Referee our witnesses Jewish swine, etc. as arbiter of elections and who assaulted Edward Rager jointly with Zak known for her violence and vile language and placing the conduct of the humiliating elections in his unclean hands, without the prior final determination who the voting members are on a solemn religious holiday for some of our outstanding members is an insult to justice, to Paderewski and to America.

***Zak, who somehow, though described by Bobbe and Malon in their affirmations and briefs on file in Court as a "mere clerk", to save her from contempt for violating the Loreto order and in others as never an officer (note the Connecticut exhibits) and in others correctly as the principal manipulator, engineer, general and executive manager, wrote as follows to Dr. Rager early in May 1972:

"Dear Dr. Rager:

Words are inadequate to express my appreciation for your wonderful counsel. Thank you very much.

Sincerely,
s/Anna Zakrzewska
Anna Zakrzewska

***

Dated: February 19, 1972 Forman Bullock

Affidavit Of George R. Englert in Support of Motion to Vacate Judgment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of The Paderewski Foundation, Inc.

George R. Englert, being duly sworn, deposes and says:

I am a petitioner in the Mandamus Proceeding and a respondent in the Zawisza Proceeding. I am mortified by the deliberate inclusion of Witkowski as a party despite the fact that we discontinued our lawsuit against him before he died and most of all by the terribly unjust refusal by Judge Leff to consider our Mandamus Proceeding and granting judgment versus my Mother and me to Zawisza.

My widowed Mother and I have been associated with the Paderewski Foundation for over ten years after my Mother, a stranger in New York City was anxious for us to be active in best social circles.***We became members by helping at those affairs and entertaining in our home in New Jersey prospective contributors interested in social and other promotion and convinced by Witkowski that he was the "number one friend and counsel of Paderewski" as he was described in the monthly Foundation Bulletin in which Witkowski was featured with the bust of Paderewski, Senator Muskie, Judge Bayer, Governor Koerner and other recipients of gold medals, trusteeships and honorary member-

ships, with solicitation of five thousand dollars, one thousand dollars and cheaper "memberships". Only such one thousand dollar membership was procured from a certain Cardinal who was cajoled in the belief that Witkowski was the closest and intimate friend of Paderewski and a member of his cabinet while he was Premier of Poland.

***I am sickened to learn that the predictions of George Suski, Henry Malon and Judge Bayer that we had no chance with Rager as counsel for the Foundation have been it appears fulfilled by the death sentence by Judge Leff for the Foundation and its truly loyal members who have dared to become involved at the pleas of the Witkowskis "to save the dying Foundation from treacherous Poles". Among those he correctly pointed out as "dangerously treacherous" is Zakrzewska (called also Zak) whom Dr. Rager saved from being fired. For this she expressed time and again profound gratitude only to turn her venomous perjuries against him, Mrs. Rager and me. I read her fabricated testimony before Judge Leff and its atrocious perjuries.

Some of the True Facts Contrary To Her Testimony

1. On December 22, 1966, she introduced Dr. Rager to those present as "the wonderful man who saved the Foundation from an awful scandal in Connecticut and losing the Charter in New York"!

2. In reference to the only meeting at which Rager appeared in January 1967 Zak testified that one Kudlick who was there was then a member and

director. Lie one: No directors whatever during period from 1960 to March 6, 1967.***

3. At the meeting in January, Dr. Rager emphatically stated that he would have no part of the Foundation as a Polish Ethnic or Polish-American thing and would be only interested if it would be run according to highest ethical principles on an universal non-ethnic basis with a new charter, new by-laws and an active board of directors, with a special class of voting members in order to attract large contributors for scholarships, etc.

4. Zak stated that there were no membership applications or other membership records and she only had lists of those who attended tea parties, dances and such, about one hundred fifty names at most including new names supplied by my Mother and me.

5. My Mother and I pledged a large sum to the Foundation to be applied exclusively toward retaining Edward Rager as counsel and Executive Director.

***

9. I and not Zak delivered the books described in Witkowski's retainer letter of January 24, 1967 to Diefenbach in February 1967 and I and others were present when they all were returned to Zak on April 17, 1967 - except the old minute book.

10. Dr. Rager was not present at the meeting of directors on March 13, 1967. Zak's story on

this score is only one of her typical contemptible falsehoods. Dr. Rager was requested to come after the meeting of directors was over at about 5:00 P.M. and he and his secretary and all directors were invited by Witkowski to celebrate at Geiger's Restaurant.

***

13. On April 11, 1967 the amended certificate of incorporation was read verbatim and adopted unanimously with applause by a standing vote and signed in the presence of members by Witkowski and duly notarized.*** Witkowski was very happy and again invited all present to Geiger's Restaurant. We can get many witnesses to prove that he was there and made a glowing speech about Rager.

14. The resolution against persecution of the Roman Catholic Church was purposely misquoted by Zak - it was clearly also against any persecution of any religion.

***

16. On May 2, 1967, when Zak delivered the letter from Witkowski she cried and said:

> Sorry I have to give this to you - they made him sign when they told him you will sue him for an accounting.

***

18. Prior to the meeting of May 23, 1967, Witkowski gave me a letter to Mrs. Rager

requesting that the meeting for the adoption of the by-laws be postponed till June 6, 1967. The original of this letter is on file in this Court before Judge Leff!

19. The by-laws which were studied by all the directors prior to May 23, 1967, were adopted and with changes referred for further reading and reconsideration for the meeting on June 6, 1967, at which concededly all directors received notice. Since we discovered that technically the date of the annual meeting as directed and desired by Witkowski, June 29 (Day of Paderewski's Death) should be in the by-laws, we inserted this provision in the by-laws with full approval of all directors.

20. The by-laws have been amended several times since, as shown by our proposed amended petition submitted to Justices Levy and then Fino without any consideration by them but with specific leave to renew are before Judge Leff on our renewed but undecided motion. They contain several important amendments - date of annual meeting, November 6, Paderewski's birthday, substantial reduction of membership dues; also a provision for trustees without any requirement for dues! When Zawisza was illegally appointed as trustee there was no provision in the original certificate for trustees as I understand the law then in effect required.

***

22. It was not pleasant to testify with senile Witkowski screaming, Zak, Zawisza, Smolenic

and the Lazarrs calling us Jew swine, gangsters, "god damn liars" etc. and worst of all assaulting bodily our counsel Edward Rager on several occasions -- all tolerated by the Referee. Bobbe had been quite successful by his propaganda to convince several judges and their secretaries that their careers would be enhanced by the defeat of Rager. This I knew from many appearances in Court.

***

25. The judgment means actually the turning over of the Foundation to the violent treacherous perjurer Zak and embezzler Zawisza. Zak also perpetrated perjury when she helped to turn over very substantial assets of Ignacy (not Ignace) Jan Paderewski to an unworthy person (Judge Bayer, too, received a slice). She with Malon also arranged to turn over Foundation funds to the impostor Zawisza who actually embezzled these funds. The judgment means the surrender to a few more pro-communist anti-human, anti-religion persons, helping Zak and Zawisza to be in control of the Foundation and dissipate funds on an even larger scale than during the Witkowski regime.***

26. To the credit of Witkowski, he did obtain visas for many immigrants...In 1966, however, he definitely had qualms of conscience and wanted to retire honorably (See copy of Minutes signed by Zak of Meeting December 1, 1966).

27. To appoint the embezzler Zawisza in charge of "elections" on Sunday, March 19, 1972, without ample opportunity for us to move for reconsideration

and make it difficult for us to appeal with the aid of some big respected lawyer able to overcome the prejudice and bias against our counsel and us constitutes a most horrible miscarriage of justice and fair play.

28. As to the fabricated story by Zak as to what actually transpired on April 15, 1967, it was Dr. Rager who arranged for a birthday party for Witkowski. My widowed Mother was suddenly swayed by the intriguers not to live up to her pledge made on March 13, 1967 and thus a check given on account to Dr. Rager was not honored. Respondent Mrs. Lazarr who learned this from Zak who persisted on coming to Rager's office - intrigue and snoop - wanted her husband to become president. She told Witkowski that I and my Mother welshed. Mr. Lazarr also told Witkowski that Rager was planning to sue him. Witkowski, inflamed and confused, asked Mrs. Rager "what happened to the Englert pledge".

***

30. Mrs. Rager was cajoled by Zak and Witkowski over the protests of Dr. Rager to become active as a director and the Zak statement that Rager foisted her on us is a falsehood. Mrs. Rager was introduced to me by Zak at a Tea Party in October 1966. Both Zak and Witkowski importuned her to join the Foundation... I met Dr. Rager on December 22, 1966, at the York House with what Witkowski called the cream that was left in the dying Foundation at a testimonial dinner by Witkowskis for Dr. Rager for what he did for the Foundation in Connecticut.***

Mrs. Rager, much to her sorrow, gave to the Foundation many hundreds of hours for typing, many a day and night papers (some I believe never read carefully by some judges, who prejudged, influenced by the vicious Bayer, Bobbe, et al propaganda) needed to answer simultaneously five motions made returnable deliberately by Bobbe, to cause confusion, before different judges in this Court and in the Appellate Division. She never received one cent for it but instead abuse, assaults, robbery and embezzlement by a woman friendly to Bobbe, without any help from the Courts or police or the district attorneys. Where is justice and brotherhood of man?

31. Dr. Rager was retained for two years but he has been working now for five at a terrible economic loss and humiliation but the judgment by Judge Leff declares in effect that he only did what was wrong and censures and crucifies him. We can prove before an impartial jury that the attacks on him are what some call McCarthyism but that is a mild term for it - here it is deliberate destruction of a just man by using our Courts for chicanery, degradation, character assassination and destroying a man's ability to live and function normally.***

***

34. I cannot comprehend why Judge Leff also ignored our Mandamus Proceeding which recites awful wrongs and crimes by Zawisza, Zak, Malon, et al.

35. Let is be said that we suffer from a per-

secution complex, I am ready to testify that whenever I went to Court there was always some Clerk or secretary who made snide remarks about Rager and that distinguished Referee in Disciplinary Proceedings George Trosk, who appeared for us several times as counsel (Bobbe in magnifying Rager's retainer did not say how much Mr. Trosk got or how much he got) warned Rager not to appear before certain politically oriented judges and especially in the Appellate Division where Bobbe, too, before Judges Carney, Loreto, Brust, Frank, Schweitzer, Ascione, Gold, Lupiano and Backer flaunted prejudice versus Rager and even threatened some judges that unless they ruled in his favor they would be reversed in the Appellate Division where "Rager is hated"! At all these times I appeared in Court and heard some judges agree with Bobbe but some like Justices Loreto and Backer were very just nonetheless and unafraid of political reprisals and stated that they would be guided by what they deemed right.

***

37. Will a politically and otherwise influential certain law secretary (and former deputy to New York Attorney General) who has been helping Zak, Grabowski and Zawisza at the illegal June 5, 1967 meeting and gave much aid to Bobbe thereafter (especially on April 15, 1970) be present at The Plaza on March 19, 1972 and then otherwise be used as a symbol and proof of Bobbe's contention that Attorney General Lefkowitz and his staff are one hundred per cent for Bobbe and against ---- Rager?

***

39. Shall Mrs. Rager suffer too the humiliation of whispering sneers and such that she is either a "Jew thief" or a "Nazi", etc.? Will the police be there to protect us as they have not so far the Ragers from assaults, burglaries, etc.?

40. Will there be the same "new" members who were brought in by Furka, their leader in the extremist Polish underground who tried to assault me twice and if I had been a Jew would have sold me to the Nazis in Poland (his vicious activities described in our affirmations on file before Judge Leff - sent to him by Referee Bieber never contradicted by Bobbe's clients.)

41. Shall the Foundation be delivered to these godless people on a Sunday which to my Mother and me is a holy day?

***

44. We have had many Paderewski concerts, literary and historical discussions and favorable attention from the news media to Paderewski than at any time after his tragic death, most all due to persistent efforts of Rager (see copy of letter of October 23, 1972) and more attention in one month to the true ideals of Paderewski, than during the eighteen years before "fiend" Rager appeared on the scene. It is only because Rager had to defend me in the Criminal Court for about a year, the permission by the Court to Zawisza to maintain his dilatory and sidetracking frameup proceeding and not granting judgment for us when

the learned Mr. George Trosk sought it, that we have not accomplished much more. A just trial on the merits before the Court and Jury will accomplish that.

45. We expect to prove beyond any doubt that we are the only aggrieved persons, that there would have been no litigation were it not for the diabolical intrigues and chicanery by Malon, Bobbe, Zak, Zawisza and a few others that the decision of Judge Leff is inimical to the Foundation, to the memory of the great Paderewski and sanctions its immobilization and demise by converting it into the illegal fraudulent, anti-human instrument for evil propaganda and selfish purposes in the same manner, and much more so, as it was conducted during the one man Witkowski rule and if not vacated will remain, if not reversed, a flagrant travesty on American justice.

***

19th day of February 1972

George R. Englert

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of The Paderewski
Foundation, Inc.
On the Petition of Fales, et al - Mandamus
On the Petition of Leon Zawisza

Henry Del Rosso, being duly sworn, deposes and says:

I am an investigator for the New York State Division of Human Rights. I am distressed and aggrieved by the judgment of Judge Leff. Because Mr. Bullock could only work late nights and on this Saturday and stenographers and typists are hard to get for such times I request that my testimony before Referee Bieber (SM 76, et seq) and affidavits on file in Court of May 11, 1970 and November 4, 1970, be made a part of the record. They show that in May 1967 Zak (while busy packing the illegal meeting on June 5, 1967) refused to accept my membership application. Nonetheless, I became a life member thereafter, encouraged by the decision of Justice Loreto and I have been a director since July 1969.

I witnessed in February and in May 1970 at four hearings before the Referee a most unfair trial - a mockery of justice with continued vicious insults and assaults on Rager by Zak, Zawisza and Lazarr and screams by the Witkowskis throughout the hearings which culminated in attempts by Zak to kill him when he tried to stop her from taking during a recess one of our important exhibits.

Having been vitally interested and active in civic and political affairs, I have had occasion through the years to observe sadly how powerful political enemies of Rager continued to conspire and connive at his utter destruction in a most unprecedented manner and those who tried to help the truly just man have suffered reprisals, too.

I plead for a fair trial by jury.

19th day of February 1972

Henry Del Rosso

APPENDIX R

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Dorothy T. Fales, et al.,
Plaintiffs,
-against-
Edward S. Witkowski, et al.,
Defendants.

Index No.
11339/1967

PLEASE TAKE NOTICE that upon the annexed affirmation of Edward Rager, dated January 26, 1971, on the statement of readiness served by mail on January 15, 1971, by Sidney S. Bobbe, Esq., in behalf of the named defendants, on the Order of this Court (Mr. Justice Backer) of April 28, 1970, on the stipulation of discontinuance of this action against Edward S. Witkowski and Jeanette Witkowska, on the Order of Mr. Justice Fein entered on February 2, 1970, and on all proceedings heretofore had herein, plaintiffs will move this Court at Trial Term, Part II, thereof, at the Courthouse located at Sixty Centre Street, Borough of Manhattan, New York City, on February 5, 1971, at 9:30 o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order striking the statement of readiness and for such other and further relief as the Court may deem just together with costs.

Answering papers, if any, shall be served no later than five days before the return day of the motion.

Dated: January 26, 1971
To: Sidney S. Bobbe

Forman Bullock
Attorney for Plaintiffs

NOTE OF ISSUE

Court Case No. 11,339-1967

Supreme Court, New York County, N.Y.
Notice for January, 1971
Term of Court.
Trial - Without Jury
Date Summons Served -
June 5, 1967
Date Issue Joined -
November 27, 1967

Nature and Object of Action -
Other Equity-For an
injunction and an
accounting.

Dorothy T. Fales, et al.,
Plaintiffs,

-against-

Edward S. Witkowski, et al.,
Defendants.

Forman Bullock
Attorney for Plaintiffs

Sidney S. Bobbe
Attorney for
Defendants
above-named
except for
defendant
Leon Nadrowski

Henry C. Malon
Attorney for defendant
Leon Nadrowski

STATEMENT OF READINESS

For use in First and Second Judicial Departments
Required by Special Rules respecting Calendar Practice

1. All necessary or proper preliminary proceedings allowed by statute and Rules of Civil Practice relating to examinations before trial, physical examinations, bills of particulars, and discovery and inspection, and by court rules applicable to notes of issue:

*b. the plaintiffs have had a reasonable opportunity to complete such proceedings, but have failed to do so, and are precluded from conducting any examination before trial because of failure to observe the conditions set forth in the order of the Appellate Division entered on December 18, 1969, making such examinations contingent on plaintiffs' serving a bill of particulars in accordance with said order, which plaintiffs have failed to serve, and plaintiffs are now absolutely precluded from doing so.

*c. The defendants do not intend to conduct such proceedings.

3. Settlement of this case has been discussed unsuccessfully.

4. This case is ready for trial.

January 11, 1971
(Date)

Sidney S. Bobbe
Attorney for
Defendants named
except Leon
Nadrowski

SUPREME COURT-NEW YORK

Dorothy T. Fales, et al,
-against- Plaintiffs,
Edward S. Witkowski, et al,
Defendants.

11,339-1967

REPLY AFFIRMATION ON MOTION FOR A PREFERENCE, AND ANSWER TO MOTION TO STRIKE STATEMENT OF READINESS

Sidney S. Bobbe **affirms**, under penalties of perjury:

***

The first ground stated by him in his affirmation is that "One of the plaintiffs, Haliburton Fales, died." The answer to that is that Haliburton Fales was never a plaintiff herein.

***

Instead, the plaintiffs instituted an independent Article 78 proceeding, which is now pending, and which has nothing whatever to do with this action, which is one for an injunction and an accounting.

***

Item 8 of the affirmation is likewise without a shred of truth in stating that this equtiy action has been superseded by the mandamus proceeding. Incidentally, the petition for mandamus came on to be heard before Mr. Jus tice Levey, and he denied it, without prejudice to a

renewal after the conclusion of the aforesaid hearings before the Referee.

***

In Item 12 it is claimed that another appeal is pending, seeking to establish "the non-existence of any action entitled as in the notice of readiness." No such appeal is pending.**

February 1, 1971 Sidney S. Bobbe

APPENDIX S

Minutes of Special Meeting called by
Edward S. Witkowski, President,
Thursday, December 1, 1966, at
55 West 42nd Street, N.Y.C.

Present: Mr. Edward S. Witkowski,
Mrs. Edward S. Witkowski,
Mrs. Haliburton Fales,
Mr. Henry Korab, Dr. Adam
Gutowski, Mrs. Adam Gutowski,
Mr. Chester Grabowski,
Congressman Helstoski.

The meeting was called to order at 11:00 a.m. by the President, Edward S. Witkowski, at which time the President gave a brief summary of his years of service to the Foundation and suggested reorganization and new leadership with himself as Honorary President. It was unanimously postponed till some future date.

Dr. Gutowski made a motion that Mr. Chester Grabowski be nominated and elected to the office of Vice-President and to serve on the Executive Committee. The motion and nomination was seconded by Mr. Korab; Mr. Grabowski accepted; vote was taken; elected unanimously.

Mr. Grabowski cited some plans which Congressman Henry Helstoski was working on which will benefit the Foundation.

Mrs. Fales made a motion proposing Congressman Helstoski as a member of the Board of Trustees, it was seconded by Mr. Korab, the vote was unanimous.

On a motion made by Mrs. Gutowski and seconded by Mrs. Fales the meeting was adjourned at 1:30 p.m.

Due to the fact that there is no Secretary General, these minutes were taken by and are now submitted by:

Anna Zakrzewska

Minutes of Meeting June 5, 1967
The Paderewski Foundation, Inc.

Minutes of Special Meeting of Members of The Paderewski Foundation, Inc. held on June 5, 1967 at The Plaza, Fifth Avenue at 59th Street, Borough of Manhattan, City and State of New York.

This Meeting was to be held in the "Mayflower Room"; transferred by Hotel to "Savoy Room".

The meeting was called to order by the President, Edward S. Witkowski, at or about 7: P.M. after doors to Savoy Room, where meeting was being held, were closed.

Then, a group of recent members, namely, George R. Englert, J. Bradford Hay Whitney, Chester, Lewis Nassau, signed in, as all members present did upon entering, then commenced to serve Summonses.

Then, George R. Englert was served with a Summons for assault made by him on Anna Zakrzewska, on May 31, 1967, in the offices of the Paderewski Foundation, Inc., at 55 West 42nd Street, Room 738, Borough of Manhattan, City and State of New York. This aforementioned group then left the meeting.

The meeting was again called to order by the President, Edward S. Witkowski.

Miss Anna Zakrzewska made the following statement:-

"Pursuant to the instructions of the President, Mr. Witkowski, I mailed, on May 31st, 1967, notices to all members of The Paderewski Foundation that this Special Meeting of the Members would be held on June 5th, 1967, at 7:00 P.M. at the Mayflower Room of The Plaza Hotel, Fifth Avenue at 59th Street, in the Borough of Manhattan, City and State of New York."

Mrs. Wos was asked to read the nominations for Officers and Directors:

list off ballot

Nominations were opened and asked from the floor; the following accepted and were added to the list:- Bohdan Gajewicz and Ignacy Nurkiewicz.

Mr. Niebieszczanski asked the he and Judge Bayer be voted as Directors and not Vice-Presidents. It was passed that they be so considered.

A motion was made that nominations be closed; Seconded by Mrs. Gilbert; and passed.

The following inspectors of election were named:

Miss Anna Zakrzewska
Dr. Thomas J. Ustach
Mr. Edward R. Malon

A resolution was made by Mr. Casimir Rogacki that the Board of Directors select the Officers.

An election by ballot took place; the following were elected to the Board of Directors:-

Mr. Edward S. Witkowski -
President and Director

attending thereby showing their support and interest in the Paderewski Foundation and what is right and just.

"I wish to thank the members of the Paderewski Foundation for attending this meeting and election of regular Officers Board of Directors as the three month interim of Officers and Directors elected on March 6th, 1967, is expired.

On March 6th, 1967 that the Officers and Directors elected on that day were to serve for an interim of three months, that term is expired and we will hold an election of regular officers and Board of Directors.

Close of Meeting:
The President, Mr. Edward S. Witkowski, stated that he was shocked at the charges brought against innocent people when the criminal acts were perpetrated by the ones bringing charges against us. I wish to thank all the members attending this meeting, thereby showing their support and interest in the Paderewski Foundation and what is right and just. A short meeting of the Board of Directors will be held immediately after the closing of this meeting.

Motion made to close the meeting, seconded and duly passed.

The meeting was adjourned by the President.

Board of Directors Meeting

It was voted that the regular meetings of the Bd. of Dirs. will be held on the first Wednesday of each month, at 6:00 P.M. at the Offices of the Foundation, 55 West 42nd Street, Room 738, New York City.

Next meeting will be held on Wednesday, June 14th, 1967, at 6:00 P.M. at the offices of the Foundation.

Mr. Niebieszczenski made a motion that all banks be notified, seconded by Mr. Lazarr and passed.

The Bd. of Dirs. were made known that all Banks have been notified by telephone and by letter and that Edwina Rager had, since our letters had been sent, also written to the banks.

The Bd. of Dirs. were also made known that the U.S. Post Office has also been notified by letter that there has been no change of address of the Paderewski Foundation and that they please notify this to the Main Office and all Branches thereof.

It had been decided that all other important issues concerning the present situation of the Foundation be taken at the next meeting which is to be held Wednesday, June 14th, 1967, at

The Paderewski Foundation, Inc.
55 West 42nd Street
New York 36, N.Y.

(The Paderewski
Foundation seal)
Edward S. Witkowski
President and Founder

March 30, 1967

Dr. Stella Stenley
68-15 Dartmouth Street
Forest Hills, New York

Dear Doctor Stenley:

We are grateful to you for your check in the sum of $250.- to the order of Edward Rager toward his retainer as Counsel for the Paderewski Foundation.

Your check, which we received today, will be forwarded immediately to Dr. Rager.

The most auspicious event in the life of the Paderewski Foundation was the meeting of Dr. Rager and shortly thereafter retaining him as Counsel and Executive Director, his sincere exuberance and enthusiasm for the best interest of the Foundation has already begun to show results.

Our faith in Dr. Rager is implicit and unequivocal. His dedication and unstinting efforts towards making this Foundation truly great and fulfill the high ideals of Ignacy Jan Paderewski, should be an inspiration to all who believe in the loftiest

attainments of man. One cannot be in Dr. Rager's presence and not feel it.

Thank you for your interest and your knowing Dr. Rager we know the Foundation has a true friend.

I want to assure you that I as the President and Founder of the Paderewski Foundation will give Dr. Rager my full support in his endeavors as Counsel and Executive Director of the Foundation.

Most sincerely,

Edward S. Witkowski
President

ESW/az

cc: Dr. Edward Rager

All Donations will be duly acknowledged for income tax purposes

Supreme Court
of the
State of New York

Office of Special Referees

Seymour Bieber
Supervising Special Referee

June 23, 1971

Forman Bullock, Esq.

Sidney S. Bobbe, Esq.

Re: Fales vs. Witkowski; Paderewski Foundation (Zawisza)

Gentlemen:

This is to advise you that I have been instructed by Mr. Justice Leff not to proceed at this time with further hearings in the above entitled proceedings until the related pending matters in his I.C. Part 5 are disposed of by him.

Very truly yours,

Seymour Bieber
Supervising Special
Referee

cc: Hon. James J. Leff,
Justice, Supreme Court

APPENDIX T

Motion by Petitioners Presented to Justice Leff on January 17, 1972 and Marked for Identification

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Dorothy T. Fales, et al.,
Plaintiffs,

11339-67
Equity Action

v.

Edward S. Witkowski, et al.,
Defendants.

Dorothy T. Fales, et al.,
Petitioners,

11339-67
Mandamus
Proceeding

v.

George J. Suski, et al.,
Respondents.

Leon Zawisza
Petitioner,

15371-68

v.

The Paderewski Foundation, Inc., et al.,
Respondents.

Take notice that on the notice of motion by you as attorney for respondents, dated January 6, 1972, returnable on January 17, 1972, seeking judgment of the counterclaim, the petitioners will cross-move on January 17, 1972, at Trial Term, Part V .....

1) To dismiss a motion dated January 6,1972 by Mr. Bobbe for judgment against the petitioners in the Mandamus Proceeding or in the alternative to deny it.

2) To grant petitioners cross motion for judgment in the Mandamus Proceeding and in any event to strike certain allegations in the answer to the petition in Mandamus as scandalous.

3) In the event the motion under 2) is denied to permit the service of an amended supplemental proposed petition.

4) To vacate a stipulation executed under the title of the Fales action on June 25, 1971 and to relieve the plaintiffs-petitioners and their attorney Forman Bullock and me from the terms thereof. (Exhibit A)

5) To vacate the purported order of contempt by Justice Fino on or about September 25, 1971 and/or direct a hearing thereon.

6) To direct Sidney S. Bobbe to return forthwith to Forman Bullock and Edward Rager the sum of five hundred dollars.

7) To vacate the statement of readiness filed in the Fales action in January 1971 and in the alternative to permit the petitioners to serve and file a demand for a jury trial.

8) To direct the respondents to comply with the orders of Justices Fein and Backer of February 2, and April 28, 1970, respectively, to give

discovery; and

9) In any event, to adjourn the trial for about three months.

10) Such other relief as the Court may deem just.

Dated: January 14, 1972

Forman Bullock
Attorney for Plaintiffs, Petitioners, Respondents

To: Sidney S. Bobbe, Esq.
Attorney for Defendants, Respondents, Petitioner

SUPREME COURT - NEW YORK

Dorothy T. Fales, et al,
Plaintiffs,
-against-
Edward S. Witkowski, et al,
Defendants.

It is hereby stipulated and agreed by and between the attorneys for the respective parties:

1. That the above entitled action be and the same hereby is discontinued with prejudice and the injunction heretofore granted therein be vacated and annulled, without costs.

2. The plaintiffs may if they so elect continue the mandamus action commenced by them under Article 78, without prejudice to the right of the defendants therein to object to the plaintiffs right to maintain such action.

3. The defendants will, as a condition of the discontinuance of the aforesaid equity action, consent to the vacating of the existing order punishing Edward Rager and Forman Bullock for contempt.

* * *

5. A separate stipulation will be prepared by S.S. Bobbe to vacate the order punishing the attorneys for contempt, **

June 25, 1971

Sidney S. Bobbe

Edward Rager for
F. Bullock

APPENDIX U

SUPREME COURT OF THE STATE OF
NEW YORK
APPELLATE DIVISION :
FIRST DEPARTMENT
---x
In the Matter of
THE PADEREWSKI FOUNDATION, INC.
---x

In Opposition to Cross Motion
To Dismiss Appeals

**

Edward Rager affirms:*

**

FOUNDATION "DEAD" PRIOR TO MARCH 6, 1967

The prior Record abundantly and clearly shows that to quote Witkowski's own language the Foundation was practically "dead" at the end of 1966. The contributions to it ceased, particularly those from the State Department of the United States, no scholarships were given and the Foundation was discredited for revelations in the Press that in violation of its Charter providing for teaching of the Polish language and "dissemination of Polish matters" its scholarships were used ostensibly for teaching the English language and that only persons with a certain political "IDEOLOGY" could receive those scholarships.

The exhibits being submitted on our motion show that the Foundation was used and functioned for about eighteen years in flagrant violation of a Charter and that it was used as a personal

*All emphasis is as in the Court below.

vanity and profit project for Edward S. Witkowski and his commercial Witkowski Travel Bureau and that although he distributed some scholarships for purposes prohibited by the Charter (original Certificate of Incorporation) much of the money was used by him for personal trips and expenses by himself, his wife and a few of his minions whom he appointed at his pleasure illegally as trustees.

The "charitable" activities to which Bobbe perjuriously refers without any personal knowledge of any of the facts (he has never bothered to make any statement upon information and belief) have been directed to the destruction of the lives and property not only of the petitioners, Fales, et al, but also other members loyal to the Foundation and true admirers of Paderewski.

Zawisza, Lazarr have been very active despite the injunctive order of Mr. Justice Loreto and as the record shows they disbursed illegally about $40,000. of the Foundation funds, some of which as shown by the affidavit of Uminski, hereto annexed, and others were used to pay a fixer in the Criminal Court to help to frame George R. Englert where I was obliged to spend many months in my endeavor to free him from the false charges and he was finally freed. Their "charitable" activities include assaults, slander, libel and attacks on my witnesses before the Referee in which Mr. Bobbe and Zakrzewska participated. They also promoted an awful embezzlement and though District Attorney Hogan very vigorously prosecuted George Englert, the perpetrators are at large and not prosecuted.

RETAINER AGREEMENT CANCELLED
BY JUDGE LEFF

The purpose of my retainer was clearly covered by the decision of Mr. Justice Loreto who stated that I was retained to prepare a new Charter, new By-Laws, a pamphlet and incidentally also to take charge of a campaign to raise funds that could have been accomplished easily and could be accomplished now despite all the troubles my clients and I have had for we obtained many more members despite the litigation who joined voluntarily and became involved according to their abilities not merely as one thousand dollar members, as Bobbe falsely and perjuriously states, but some merely as fifty dollar members and there are several more that would gladly join the Foundation and help it to become a great institute of culture, freedom and justice on a non-ethnic basis were it not for this prolonged litigation - confused, manipulated and splintered masterfully by Bobbe. The full story as to the retainer is stated in the other affirmations and affidavits submitted herewith. I am however quoting only a few parts of the retainer adopted by the directors (with the participation of Witkowski on March 13, 1967):

To quote Mr. Witkowski he stated in his letter of January 24, 1967 that I was engaged as counsel for the growth and betterment of the Paderewski Foundation **The first step toward improvement would be a Charter expressing much better than the present Certificate of Incorporation the noble purposes and aims of Paderewski

(Your) minutes show an unauthorized appointment of trustees** who never attended any meetings. ** The offices of the Foundation are completely inadequate **

On Monday March 6, 1967 I was ** shocked when all our work of the last three months was almost nullified. ** Before and after the meeting at least two of the new directors ** they published false stories about the Foundation ** threatened to use political influence to deprive you of your present Certificate of Incorporation if my efforts as your counsel are continued.

***

Under the new Charter and By-Laws the Foundation must be truly democratic with a devotion to culture and not dominated by any sectional, racial, pro-racial and similar considerations.

***

I am ready to continue to act as counsel and executive director provided I continue to have your president's, officers, directors ** inspiring support.

***

So that there is no misunderstanding as to my functions I emphasize again that my primary function is that of counsel.** The number one hope or failure of my efforts will depend strictly on your officers and directors and if I have their complete confidence and there will be no clandestine meetings, etc., as during the last two weeks, I am confident, God willing, with a problem here and there to bring your Foundation to the level which the spirit of Paderewski deserves.

There was not one affidavit submitted by Nadrowski, Bohleber, Furka, Zakrzewska, Mrs. Witkowska, all directors and friends of Witkowski in support of Bobbe's invectives. Mrs. Witkowski, who was in Court on January 17, 1972 and as to whom Bobbe made several sworn statements before Judge Leff that she is his principal witness and because of her age there should be a quick trial before Judge Leff and asked for a preference on that score but did not permit her to testify though she was present in Court on January 17, 1972. The reason is very simple. It would be very difficult to coach that illiterate, confused and senile lady and subornate a viable perjurious story.

Witkowski did make one affidavit on November 15, 1968 when he, as Bobbe admitted before the Referee in February 1970, had been "hopelessly senile" for over two years. Yet before this Court in the June Term 1969 Bobbe represented that Witkowski was the president and fully competent!

On page three of his affirmation Bobbe again commits blatant and impudent perjury. He states "Mr. Rager claimed before Mr. Justice Saypol**

The fact is that I never appeared before Mr. Justice Saypol, that all papers for Justice Saypol were prepared by Mr. Trosk with the aid of Bullock and the active participation of then plaintiffs in Fales and respondents in the Zawisza Proceeding which was instituted deceitfully and unnecessarily by Bobbe in the latter part of 1968.

On Bobbe's appeal in December 1969 this Court overlooked the fact that after the appeal from the orders of Mr. Justice Saypol, Bobbe stipulated to submit the defendants without any further delay to an examination before trial and as a part of that stipulation Bobbe was to receive a bill of particulars and that Bobbe made his motion to preclude during the time when there was a stay in effect by this Court.

Though the bill of particulars was served and filed promptly in Court, Bobbe succeeded in persuading the Court that we were one day late. At any rate, the order of brave Justice Fein (who refused to be browbeaten by Bobbe's threats of reversal by this Court) and his decision of February 2, 1970, in full cognizance of the (undeserved) preclusion order, granted our motion to serve a supplemental amended pleading, to wit, a petition in Mandamus which plainly to the tenor of his decision superseded the Equity Action, which under all precedents in this and other courts should have eliminated any further proceedings under the title of the Equity Action.

Yet, because of prejudice vs. "one Rager" - so described by Judge Leff - the Court permitted Bobbe to make at least twenty motions thereafter before different justices under the title of the Equity Action and also in the Mandamus Proceeding, honoring Bobbe's persistence that both were extant, and permitting him to move simultaneously for judgment in his favor in Mandamus; for dismissal of the Equity Action for neglect to prosecute and simultaneously to punish Bullock and me in the non-existent Equity Action for contempt of

of Court for not permitting him - in wilful default of discovery ordered by Justice Fein on February 2, 1970 and again by Justice Backer on April 28, 1970 (who struck his answer in the Equity Action for that reason) - during the summer recess - while many motions on both sides were undetermined and among which were Bobbe's own motions and appeals to this Court to dispense with the references - to inspect the minute book allegedly needed by him for the hearings before the Referee which might have taken place late in the fall if he was successful on some of his motions.

Despite the orders of Justice Tierney and Murtagh and Lupiano directing among others that the Referee appear for a hearing concerning the alleged contempt, indeed he never appeared, Justice Fino, due to Bobbe's "pressure" on his secretary (sic!) signed an order never before approved in its form by any high court in this or any other state, punishing Bullock and(outlaw) Rager for contempt.

FINE, COMMITMENT AND STIPULATION

On page five of his affirmation Bobbe refers to Bullock, whom he sought to commit unless he paid the fine of two hundred fifty dollars now as a mere "FIGUREHEAD","never having participated in any Court hearing"; another perjury designed to degrade and to confuse. Bullock appeared in this Court with Mr. Trosk several times. He appeared with Bobbe before Mr. Justice McGivern and obtained a stay. He appeared many times at Special Term. He

appeared many times at Special Term. He appeared in this Court in December 1969 and in vain sought permission from Chief Justice Stevens for an adjournment of an appeal brought on on notice of fourteen days (including two weekends) during a very difficult economic time for us (no mercy for outlaw Rager). We were then in the process of being embezzled, etc. but Chief Justice Stevens denied Bullock's application.

Suffice it to say, that the last complete paragraph on page five is another insult added to injury when Bobbe charmingly infers that the litigation was sent to Judge Leff by this Court, in the same manner as he managed to convince Judge Leff that there was an order from Chief Judge Fuld for a rush to judgment and that Chief Judge Fuld actively participated in the stipulation of June 25, 1971 which was also the subject of the motion made by me before Judge Leff on January 17, 1972, marked by him "FOR IDENTIFICATION".

JUDGMENT V. RAGER, et al
IS ULTRA VIRES

The judgment awards to Zawisza, the embezzler, relief far beyond what is permitted under Section 25 of the General Corporation Law and far in excess of what he demands in his Petition (copy of order to show cause and the closing paragraphs seeking relief are attached). Bobbe, who for months used all "pressure" to take the litigation from Judge Leff or to sway him against us, suddenly changed his mind and successfully

maneuvered on January 17, 1972 for a trial merely of the Zawisza Proceeding.

On June 18, 1971, Bobbe wrote to Judge Leff: Fales v. Witkowski

"..on June 17, 1971 the Appellate Division affirmed all the orders in the above entitled action (Bobbe misstatement - also titles in Mandamus) thereby terminating the stay.. There is therefore no .. impediment to your passing upon my application for a preference .. and .. plaintiffs' (motion) to vacate the statement of readiness (in equity action on ground that Mandamus is the only thing to try with right to jury).

On August 24, 1971, Bobbe wrote to Judge Leff: Fales, et al v. Witkowski, et al

"I have previously sent you a copy of the stipulation entered into in the above .. whereby (it) was discontinued with prejudice and the injunction ... annulled. The case is therefore no longer properly before you. I therefore withdraw my previous request for a conference where the respective contentions .. could be heard.

On August 31, 1971 Bobbe again wrote (and many times thereafter) to Judge Leff:

I wrote to you (Reference under Zawisza and Equity Action) that the filing (stipulation of discontinuance) has the effect of precluding

further proceeding EXCEPT AS A RESULT OF A PLENARY ACTION. .. This TERMINATES YOUR JURISDICTION IN FALES THE ONLY MATTER .. BEFORE YOU. I t.. request that you inform the .. Referee that he may now proceed .. in Zawisza.

In all the letters, telephone calls to several judges, their secretaries, etc., Bobbe was fixing in their minds his crafty and corrupt design "that all the activities" of the Foundation have been "held up by me", whereas despite all the sabotage I have activated it more constructively than any of Bobbe's clients could ever accomplish on their "Polish Christian Ethnic" theory.

* * *

Another exhibit attached to the motion papers to vacate * * * is a proxy of Henry Korab Janewicz - taken BY TELEPHONE by Zakrzewska.

Bobbe states (page 8 of his affirmation) "that the appeal is taken not by the respondents in the Zawisza Proceeding but by the Petitioners in the defunct Mandamus Proceeding". Yet in opposition for a temporary stay before Judge Nunez, Bobbe - after announcing as usual that Rager is disliked by judges (one of the few partial truths uttered by him)-** and that Rager asked (as I did) some to disqualify themselves-said that Judge Leff "lumped" all the proceedings including the Mandamus into one when he

made his decision. Now he says the opposite. This is the Bobbe sanctioned procedure - **

By invalidating my retainer agreement of March 13, 1967 without any jurisdiction therefor, without any opportunity for me to defend, and contrary to truth, Judge Leff has laid the foundation (repeatedly announced by Bobbe, Zakrzewska et al) for further proceedings against me and also the other appellants for an accounting and other harassment. In effect, it is the judgment of Judge Leff which paralyzes the Foundation, by turning it over to an irresponsible coterie of blasphemers and enemies of truth, justice and plain decency.

In the motion, which I made before Judge Leff with his express prior permission on January 17, 1972, which he suddenly refused to entertain and merely marked it for "IDENTIFICATION", I asked that the stipulation of June 25, 1971 be vacated and that the plaintiffs appellants be also relieved therefrom, that the order of contempt by Justice Fino be vacated or a hearing be directed therein and that Bobbe return forthwith to Bullock and me the sum of five hundred dollars. The facts as to the stipulation and what actually happened are recited at length in the Motion papers submitted on January 17, 1972 (copy attached). However, assuming that the stipulation under the circumstances outlined was valid, then clearly Bobbe should have vacated the order of contempt, which was one of the conditions

to its execution and he should have returned the sum of five hundred dollars obtained by him under duress and threat that he would get an order of commitment against Bullock and me. He should not have been permitted deceitfully and masterfully to misinterpret that stipulation so as to induce Judge Leff to find that the Mandamus Proceeding was "merely subsidiary" and there was no use "to bother" with it. (SM55)

* * *

THE JUDGMENT DIRECTS AN ELECTION PURSUANT TO BY-LAWS "IN EFFECT ON MARCH 6, 1967" OF DIRECTORS WHO SHALL IN TURN ELECT OFFICERS.

By-Laws in effect on March 6, 1967, true copies of which are attached as Exhibits, show beyong any doubt that this provision in the judgment is without any foundation and that it provides for an illegal election contrary to those By-Laws.

* * *

Exhibit XI: Annual Meeting February 25, 1964, not saying whether members, directors or trustees - reporting that Witkowski was re-elected by acclamation and that certain officers and advisers were also elected and trustees for a two-year period. No quorum. No proof of notice of meeting. These minutes also report that "the ideological work of our scholars and its influence on the university campuses

is well known. GREAT IMPORTANCE IS ATTACHED TO PADEREWSKI FOUNDATION BY COMMUNIST-DOMINATED REGIMES".

* * *

EXTRACT FROM THE MINUTES - CONFERENCE BEFORE JUDGE LEFF (SM5) November 4, 1971

The Court: What is approximately the present membership?

Bobbe: Approximately 150. That is the information I have. I have no personal knowledge on that score.

The Court: And that is members as defined in the Charter?

Bobbe: Yes.

The Court: Or by whatever classification?

Bobbe: Dues paying members.

The last three answers by Bobbe were one hundred per cent false. There was no provision in the Charter for any dues paying members or any definition thereof. THE ONLY DEFINITIONS AS TO NON-VOTING MEMBERS ARE QUOTED ABOVE.

The Court: (inquiring about a possibility of a settlement)

Bobbe: It is not possible (SM6). He (meaning Rager) has done the most fiendish things.

The Court: (SM7) I will assume that the people you represent believe they would like to continue to administer the Charter in accordance with its terms (dissemination of Polish matters).

Bobbe: Mr. Witkowski, who as president founded this organization, had a tremendous following among the Polish American people. (This is absolutely false as shown by several letters from Witkowski to me, his public statements in 1966 and 1967 expressing the desire to retire and complaining that the Poles are "treacherous", ungrateful and that the Foundation was very poor and almost "dead"). Zakrzewska's letter to Grabowski on March 16, 1967 confirms that the attendance of thirty-nine persons constituted the first and best membership meeting in the history of the Foundation.)

Bobbe: He(Rager) collected at least fifty or sixty thousand dollars that belonged to the Foundation.

This statement is absolutely false but was laying a foundation for the judgment against me by Judge Leff.

The Court: Is he (Rager) a member?

Bobbe: No.

The statement is absolutely false because I

have been a member before Malon and many others who voted at the March 19, 1972 meeting ever claimed membership.

The Court: (SM9) There were some motions that indicate... that this will be considered as a stipulation that will finally dispose of the matter. *** THE SUBJECT OF ONE OF THE MOTIONS IS TO VACATE OR **

Rager: (SM35): I am praying right now that you take it all so that it is not splintered the way Mudge Murtagh said and it is concluded *** All the original plaintiffs don't claim to be officers and directors. *** new officers and directors have been elected. ** Should you decide to retain jurisdiction we would like to amend our Mandamus Petition to show our new By-Laws, to show that the officers and directors ** (are new people).

The Court: (SM51) You say it (the stipulation) is not binding.

Rager: No. **there is a recent decision of the Court of Appeals that one can be relieved ** moreover he(Bobbe) abandoned it. He wrote a letter **that he is proceeding with the commitment and unless I deliver to him five hundred dollars** he would go ahead with the commitment. He abandoned it(the stipulation).

Bobbe: (SM54): We have the Zawisza Proceeding. You waived the right to that (under the stipulation.

The Court: **If there is anything you want to do with respect to a motion, I think I have got some motion papers here. They will all be returnable that morning (January 17, 1972). I WILL EITHER DISPOSE OF THEM BY RULING ON THE MOTION OR TRYING THE CASES.

Bobbe: (SM55) But this is a signed stipulation.

The Court: I have amotion on that if that is the case.

Bullock: There is a request for a motion.

Rager: We said that we would make motions.

The Court: (SM55) IN ANY EVENT, WHATEVER YOU WANT TO HAVE, IF YOU WANT TO MOVE THAT WITH RESPECT TO THAT DATE THAT WE ARE NOT TO TRY ANY ISSUES, ESSENTIALLY YOU ARE GOING TO HAVE TO TRY THE MANDAMUS. IF YOU ARE SUCCESSFUL IN THE MANDAMUS **

Bobbe: The Appellate Division has affirmed an order saying that the Mandamus may not be heard until after the conclusion of the hearings before the Referee.

The Court: So it won't be all fragmented. Thank you very much.

Rager: IF YOU DECIDE THAT IT IS NOT COVERED BY THE MANDAMUS PROCEEDING.

Bobbe: Alright.

Bobbe: (SM59) I understand Your Honor will cause the Zawisza Proceeding*

Rager: No. I asked Your Honor to reserve decision on that, because it is included in the Mandamus Proceeding, the same issue.

*****

Judge Leff stated erroneously and contrary to fact that all activities of the Foundation had been "completely immobilized" (SM14). (The record shows many activities on our part and a growing membership) and further that "any number of judges including the Chief Judge of the Court of Appeals" ordered that the case should be disposed of as expeditiously as possible and he declared that he would rule only on Bobbe's motion for judgment in Mandamus which he denied.

I strenuously objected to the statements about Judge Fuld and to the finding of immobilization and since Judge Leff refused to rule

on my motion for judgment in Mandamus, etc. as stated above I could not take part in a fragmentary trial (SM15-16).

At the conclusion (SM54) of the very brief truncated trial with coaching by Bobbe and recesses and off the record discussions in between, Bobbe stated and apparently thiswas adopted by Judge Leff "THE DECISION OF THE ZAWISZA AUTOMATICALLY TERMINATES ANY NECESSITY FOR GOING ANY FURTHER INTO THE MANDAMUS PROCEEDING."

Judge Leff thereupon commented: (SM55)

> You have got a stipulation of discontinuance.

Thereby erroneously and contrary to true facts finding that the discontinuance pertained to the Mandamus Proceeding.

After the trial was concluded, Judge Leff inquired whether there was an existing membership (SM55). Bobbe stated that there was a list but he did not have it but he would procure it and SUPPLEMENT THIS LIST LATER.

* * *

In Jacobs v. Ostow(12AD 2nd613), this Court with Justices Breitel, Stevens and Eager participating held that the power of the Court under Section 25 of the General Corporation Law

is limited to the confirmation of an election or ordering a new one and that the relief granted in the case at Bar went "far beyond that restricted power". This is the case here as demonstrated above.

In the leading case In Re Faehndrich 2NY2d 468, 161 NYS 2d 99, the Court of Appeals, opinion by Chief Judge Fuld, held that "the purpose of Section 25 of the General Corporation Law is to provide a summary review of a contested election and that the Court may not grant this or greater relief than specified in that Section" and consequently the Court was without power under that Section to determine who the stockholders are.

In the Matter of Katz 143 NYS 2d 282, Mr. Justice Stevens stated:

> Petitioner has asked for extensive relief on this petition embracing several items. However, in a proceeding of this kind (under Section 25 GCL) the limit of relief obtainable is defined by the Section as either confirming the election or ordering a new election ... a determination of the eventual rights cannot be had in a proceeding of this kind.

****

The judgment is ultra vires.

Judge Leff stated: (SM18) All motions will remain with me. All appeals from any disposition in either are to be made before me, any appeals are from my order and there is no other judge who has jurisdiction over this case.

* * * *

I submit that no authority need be cited that when some members, as here, observe Sunday as a Holy Day for religious reflection and prayer and do not want to be exposed on that day to any business transactions and surely not to be exposed to Zawisza and his mobsters (sic!) their antagonist who is to judge whether they are allowed to vote or not, at the very least Judge Leff should have granted the application not to have the election on Sunday.

The General Business Law prohibits this but the prohibition should not be merely on that score. The tenor of religious observances is well expressed by Mr. Justice Tilzer in Bloom v. New York City Transit System, 220 NYS 621.

In Sivakoff v. Sivakoff, 280 AD 106, this Court stated:

> In denying the motion to vacate and set aside the default judgment the Special Term ruled that in view of defendants deliberate default ** he could not be heard to set aside the judgment but ** he might move to open the default. It is now well settled ** in such circumstances he may resist an unauthorized judgment or decree against him in any form** he may elect.

The Court cited in support Coastal Equipment v. Herrick 243 AD 97, 276 NYS 183, where this Court ruled:

> The judgment, although entered on default was unauthorized insofar as it granted relief more favorable than that demanded in the complaint. It was open to attack, therefore, either by motion or in any form that the defendants might elect.

In Grabb v. Nicholas, 2 AD 2nd 446, 156 NYS 2d 685, the Court stated:

> The test is whether the adjudication has a binding force against the rights, person or property seeking to appeal.

On the subject of appointing Zawisza as the arbiter of elections the matter of Juster v. Morrison, 182 NYS 2d 940, is in point, where Mr. Justice Epstein, referring to the decisions and opinions of Justices of this Court, McGoldrick v. Rotwein and Segal v. Bresnick, decided that under Section 25 of General Corporation Law he was limited only to confirming or ordering a new election. However, he designated a person "wholly disinterested and of unquestioned stature, to supervise the election."

Obviously, the antagonist Zawisza does not possess those qualifications and should not have been appointed in that capacity.

****

At the Hotel Plaza on March 19, 1972*** only two directors were elected: one, Leon Centner, who as shown above was some years ago appointed as director by Witkowski and immediately voted for an amendment to the by-laws providing that MEMBERSHIP WILL BE DETERMINED ON MERIT WITHOUT ANY DUES. The other director elected was Joseph Czechlewski who participated in the illegal election on June 5, 1967; on April 15, 1970, the ** chairman of a celebration ostensibly to honor Witkowski on his birthday and as founder of the Witkowski Travel Bureau but actually with Mr. and Mrs. Bobbe, who were present,

as well as other defendants in Fales Equity and respondents in Mandamus to arrange for further support for the liquidation of Rager in getting funds for the Bobbe retainer. Joseph Czechlewski, politically active *** was *** then Secretary to a Justice in this Court .

A volume could be written just on this score, which might show why "one Edward Rager" has been treated like a leper and an outlaw and why his Constitutional rights have been greatly violated.

******

March 26, 1972

Edward Rager

APPENDIX V

SUPREME COURT-NEW YORK
APPELLATE DIVISION
FIRST DEPARTMENT

In the Matter of
THE PADEREWSKI FOUNDATION, INC.
on the Petition of
DOROTHY T. FALES, et al,
Petitioners,
-against-
GEORGE J. SUSKI... LEON ZAWISZA, et al
Respondents,
***

In support of dismissal of petition
for Mandamus

Sidney S. Bobbe affirms:

***

1. No jurisdiction has been acquired over** respondents* Suski and * Zawisza ** The charges are patently those of Edward Rager, for Bullock's office, formerly stated to be at Rager's home** Manhattan** now stated to be at Rager's home in Blue Point ** Bullock resides in Ossining. * This is but another example of the manner in which these attorneys have been playing fast and loose with the Courts.**

***

6.* Justice Greenfield decided the motion ** these petitioners appealed ** which appeal is now pending. Any error can be corrected on appeal and therefore a Mandamus cannot issue **

7. Furthermore, the present petitioners were not parties to the motion before Mr. Justice Greenfield.

**

15. ***the name of Joseph Czechlewski is interjected **"and who is now a secretary in the Appellate Division". I am not acquainted with anyone of that name. ** If he is a secretary in the Appellate Division I am unaware of it.

**

17. This is not by any means the first time Edward Rager (here shielding himself behind the name of his colleague Bullock) has made slanderous ** charges against lawyers and judges. See the opinions of this Court in Getling v. Simon, 19 AD 2d 520; aff. 13 N. Y. 2d 1964 and Rager v. Lefkowitz. 20 AD 2d 867. On the argument of the Gettley case, Rager sought unsuccessfully to disqualify Mr. Justice Breitel on the unfounded charge that that Justice had accused him of being schizophrenic and unable to argue his appeal. Courts and lawyers should be protected against the repeated and continuing leveling by a member of the Bar against them of the type of calumny interjected here - to repeat with complete irrelevance.

September 25, 1972 Sidney S. Bobbe

SUPREME COURT : NEW YORK
APPELLATE DIVISION
FIRST DEPARTMENT

In the Matter of
THE PADEREWSKI FOUNDATION, INC.
On the Petition of
DOROTHY T. FALES, et al,
Petitioners,
v.
GEORGE J. SUSKI... LEON ZAWISZA, et al
Respondents.

****

Opposition by Attorney General
to Petition in Mandamus

Ilene J. Slater, being duly sworn, deposes:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz. **

Petitioners are not entitled to the relief they seek. An Article 78 Proceeding may not be used in an effort to vacate a judgment. ** respondent Leff's judgment dated February 3, 1972, which terminated Fales v. Witkowski, and * respondent Greenfield's order dated August 2, 1972, denying a motion to vacate respondent Leff's judgment. ** This Court on April 13, 1972 dismissed an appeal from respondent Leff's judgment and has before it an appeal from respondent Greenfield's order. Inasmuch as respondent Leff's judgment terminated the action of Fales v. Witkowski, petitioners are not entitled in this proceeding to the other relief they seek including as the motions in that action dated

February 2, 1970, April 28, 1970, January 27, 1971 and January 17, 1972 and for a trial.

Sworn September 28, 1972 Ilene J. Slater

SUPREME COURT OF THE STATE
OF NEW YORK
NEW YORK COUNTY
----------x

In the Matter of
THE PADEREWSKI FOUNDATION,
INC., Fales, et al v. Witkowski, et al,
On the Petition of Zawisza
On the Petition of Fales, et al
----------x

STATE OF NEW YORK
COUNTY OF SUFFOLK

Affirmation by Edward Rager, et al, to Invalidate the Elections on March 19, 1972

**

(1) I am a voting member of the Paderewski Foundation and counsel for Petitioners in Mandamus and Respondents in Zawisza. I join in the applications of Gunars Grinbergs, Theresa Cannone, Patrick J. Murtagh and Sigmund H. Uminski, to declare the purported elections of March 19, 1972 and all proceedings held thereunder as null and void.

(2) Since I and the named petitioners in Mandamus and Respondents in Zawisza have appealed to the Appellate Division from the order of Mr. Justice Leff on March 1, 1972 denying our motion to vacate the Justice Leff judgment of February 3, entered February 9, 1972 and we do not want to waive any rights on appeal, we join only in the requests of Grinbergs, Cannone and Murtagh in respect to the elections on March 19, 1972.

***

May 20, 1972

s/ Edward Rager
Edward Rager

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of	Motion Nos.
The Paderewski Foundation, Inc.	M 10,438
---	M 10,439
	M 10,440
	M 10,272-A

Memorandum in Opposition to Reargument or Leave to Appeal to the Court of Appeals

This is a joint memorandum in opposition to all the above numbered motions for reargument.

Nothing is presented on any of the motions that was overlooked or misapprehended by the Court. The papers merely present a rehash of the original argument, only with added invective and unjustified and unspecified charges of bias and prejudice against all the Justices of the trial court, as well as this Court.

As to the application for a mandamus, leave to appeal to the Court of Appeals should be denied, first because no clear legal right to a mandamus has been shown, and second, because even where such clear right appears the granting of the writ is still discretionary (Toscano v. McGoldrick, 300 N.Y. 156, 160). And the Court of Appeals has no power to review the discretion of this Court.

Edward Rager, Esq., in support of Motion M-10440, harps on the claim (p.3) that a judgment may not be entered against a person who is

not a party to the action. But the judgment he is talking about does no such thing. In no way is the judgment directed against him. He was not even the attorney of record, but only counsel. But he has injected himself as an appellant without any justification whatever.

Apparently, he charges that the Justices of this Court should have disqualified themselves only because they decided his appeal against his client!

At page 6 of the moving affirmation in support of M-101398, 10438 and 19439, Mr. Rager claims falsely what he has repeatedly said before, and what Special Term and this Court have refused to hold, that his mandamus proceeding was substituted for the then pending equity action. Repetition does not make it so.

The motions should in all respects be denied with costs.

Sidney S. Bobbe
Attorney for Respondents

APPENDIX W

Constitutional Questions Raised in the Appellate Division on Application for Rehearing as to Denial of Mandamus, Dismissal of Appeal and Denial of Consolidation and Transfer to Another Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Paderewski Foundation, Inc.	5892 M-10438; M-10439; M-10398

Motion for Reargument

Edward Rager, an attorney at law, affirms under penalty of perjury as follows:

***...

E) In the event of the denial of reargument and adherence to the decision of October 26, 1972 and upon granting or denying the application for resettlement, leave to appeal to the Court of Appeals from each and every part of the order denying the petition and dismissing it and also the following certified questions:

1) Is the denial of the petition herein and its dismissal proper?

2) Is the denial by this Court of the petition herein and its dismissal insofar as it seeks a judgment of Mandamus against respondents Leff for his failure to adjudicate motions made by

petitioners in the petition in the Court below for judgment of Mandamus against respondents Suski et al. and merely marking the motions presented on January 17, 1972 "for identification" violative of due process of law and the Constitutions of the United States and the State of New York?

3) Is the refusal by respondent Leff to adjudicate pending applications by petitioners Fales et al. to strike the case of Fales et al. plaintiffs v. Witkowski (deceased) et al. defendants from his calendar on the ground that said action was nonexistent and was superseded by the Mandamus Proceeding in the Court below violative of due process and the Constitution of the United States and the State of New York?

4) Is the refusal of respondent Leff to consider the application by petitioners Fales et al. for a jury trial of said Mandamus Proceeding violative of due process and the Constitution of the United States and the State of New York?

5) Is the refusal by respondent Leff to consider an application by Edward Rager and Forman Bullock to vacate the order of Mr. Justice Fino entered at Special Term, Part I on or about October 25, 1972, punishing them for contempt of court in accordance with the stipulation dated June 25, 1971 and compelling the attorney for respondent to return the fine of $500 in violation of due process and the Constitutions of the United States and the State of New York?

6) Was the trial by respondent Leff on January 17, 1972 of the proceeding by Leon Zawisza

under Section 25 of the General Corporation Law a gross abuse of discretion and violative of due process of law when the stipulation of June 25, 1971 expressly provided for the trial of the Mandamus Proceeding only?

7) Did the respondent Leff have jurisdiction under Section 25 of the General Corporation Law to grant the relief thereunder for a new election presided by Leon Zawisza on a Sunday, March 19, 1972 without any record before the Court as to who the members were entitled to participate in the election, the power to invalidate all proceedings since February 13, 1967, when the petition on its face stated that elections and other proceedings transpired on March 6, 1967 were valid, the power to invalidate the amended certificate of incorporation and all by-laws of the Paderewski Foundation regardless of when they were adopted after February 13, 1967 and grant other relief not requested in the petition?

8) Is the judgment by respondent Leff entered on February 9, 1972, adjudging various rights of Edward Rager and Forman Bullock, without their being named as parties in said proceeding, adjudicating their various rights on matters previously stricken by an order of the Supreme Court, violative of due process of law and the Constitutions of the United States and the State of New York?

9) Was the designation by respondent Leff of his secretary with sole authority to decide over the telephone pertaining to any litigation before him proper and violative of due process and the

Constitutions of the United States and the State of New York?

10) Was the failure of respondent Leff to adjudicate the motion by Fales and other petitioners herein to rule on the validity of the conduct of the elections on March 19, 1972, violative of due process and the Constitutions of the United States and the State of New York?

11) Was the refusal of respondent Greenfield to rule on the conduct of the elections on March 19, 1972, violative of due process of law and the Constitutions of the United States and the State of New York?

12) Is the failure by this Court to protect a charitable Foundation from being taken over by persons, established as bona fide voting members of the Paderewski Foundation, charged as imposters, embezzlers and bribers and a design to use it for anti-racial, anti-semitic purposes, a gross abuse of discretion and violation of due process and of the Constitutions of the United States and the State of New York?

13) Is the refusal by this Court to disqualify itself from assuming jurisdiction on the petition herein in view of charges of prejudice, bias and participation by its members and staff in aid of respondents designs a violation of due process of law and the Constitutions of the United States and the State of New York?